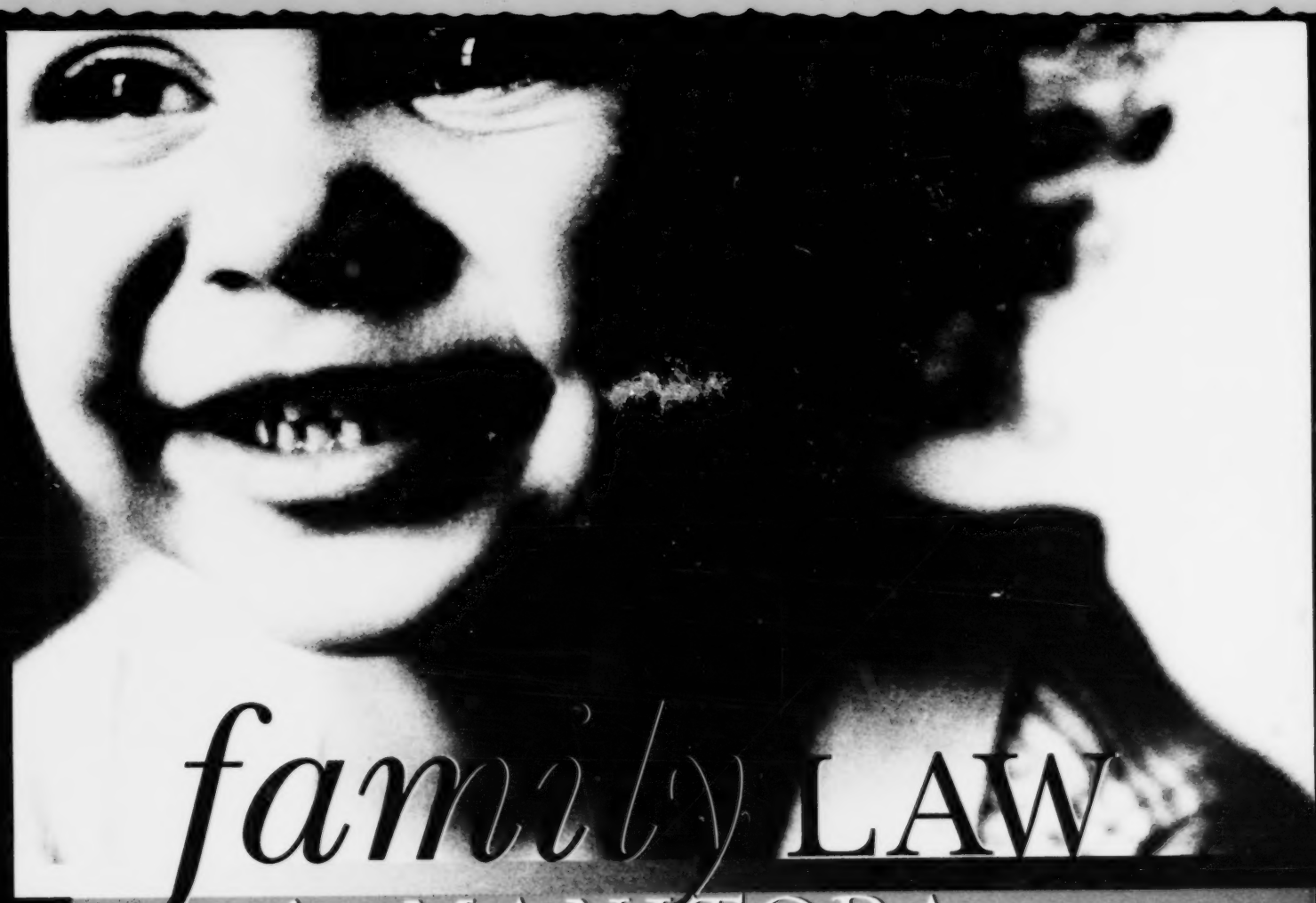

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2002

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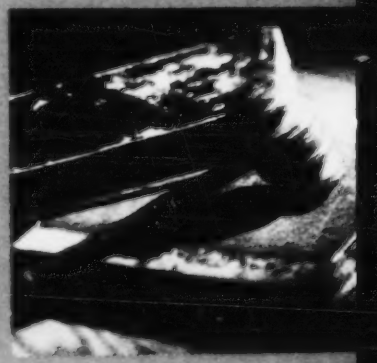

Manitoba Justice

FAMILY LAW IN MANITOBA

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Produced with the financial assistance of the Department of Justice Canada.

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CHAPTER 1

LEGAL INFORMATION AND LEGAL ADVICE

This booklet contains an overview of family law and the legal system in Manitoba as of February 2002 and is intended to provide a basic understanding of family law for anyone who wants or needs to know about it. Chapter 2 outlines the court system, court procedures and alternatives to court. Chapters 3 through 15 each cover a major legal topic in a general way without focusing on the rights of any particular family member or kind of family.

Chapter 16 explains the law respecting unmarried relationships and summarizes the information already given in the preceding chapters on this topic. In reading this booklet, you should bear in mind that some areas of family law treat persons who have lived together but never married (common-law partners) differently from legally married spouses.

Throughout the booklet you will find names, addresses and phone and fax numbers you may need. These are summarized in Chapter 17.

It is important to understand that this booklet provides general information only. How the law affects any person will depend on the facts of each case. Also, family law changes from time to time as both federal and provincial governments make new laws (*legislation: acts* and *regulations*) and the courts make decisions in cases that affect the law (*the common law*). If you have a legal problem or need specific advice, it is best to consult a lawyer who practises family law.

LEGAL ADVICE

How to Find a Lawyer

Lawyers are listed in the Yellow Pages of the phone book, and it may be helpful to ask family or friends to recommend a lawyer with a family law practice. **The Law Phone-in and Lawyer Referral Program** operated by the Community Legal Education Association (CLEA) will refer you to a lawyer who practises family law *and* who will give you a free half-hour preliminary consultation. After the consultation, you do not have to hire the lawyer if you are not comfortable with him or her.

Community Legal Education Association
501 - 294 Portage Avenue
Winnipeg MB R3C 0B9
943-2305
Toll-free: 1-800-262-8800
Web site: www.acjnet.org/white/clea

Legal Aid

If you cannot afford to hire a lawyer, Legal Aid Manitoba may be able to help. All or part of your legal costs may be paid, depending on your financial position, the type of case and the merits of the case. Applications may be made at the Legal Aid Manitoba Winnipeg Drop-In Centre in Room 416-294 Portage Avenue and at Community Legal Aid offices located throughout Manitoba, or at the Community Legal Aid offices outside Winnipeg, or through a private lawyer participating in the plan.

If you are employed, the application will cost $25. A person receiving help from Legal Aid Manitoba may choose a Legal Aid staff lawyer or any private lawyer who participates in the Manitoba legal aid plan to act on his or her behalf. If a person needs a lawyer for a case outside Manitoba, it may be possible for Legal Aid Manitoba to help obtain such a lawyer.

Legal Aid Manitoba also gives advice, information and legal assistance on a drop-in basis through staff lawyers at the Legal Aid Manitoba Drop-In Centre in Winnipeg and at the Community Legal Aid offices outside Winnipeg. Eligible persons needing formal legal representation will be referred to a staff lawyer or a participating private lawyer.

If you have any questions about Legal Aid Manitoba services, including the hours of operations for the drop-in service, you can call 985-8500 in Winnipeg or toll-free outside Winnipeg at 1-800-261-2960. All Legal Aid Manitoba offices, and their telephone numbers, are listed in Chapter 17, Important Addresses and Phone Numbers.

LEGAL INFORMATION

Only a lawyer can give legal advice. However, you can contact other resources to obtain additional legal information or to update the information in this booklet.

- The Law Phone-in and Lawyer Referral Program discussed above will give callers legal information over the phone, free of charge.

  Community Legal Education Association
  501 - 294 Portage Avenue
  Winnipeg MB R3C 0B9
  943-2305
  Toll-free: 1-800-262-8800

- Legal Aid Manitoba's drop-in service discussed above provides legal information, also free of charge, to persons attending the Winnipeg Drop-In Centre or the Community Legal Aid Centres.

  Legal Aid Manitoba
  416 - 294 Portage Avenue
  Winnipeg MB R3C 0B9
  985-8500
  Toll-free: 1-800-261-2960

- To purchase copies of Manitoba government legislation, contact:

  Statutory Publications
  200 Vaughan Street
  Winnipeg MB R3C 1T5
  945-3101
  Fax: 945-7172
  Toll-free: 1-800-321-1203

- To purchase copies of federal government legislation, contact:

  Canada Communications Group
  Government Services Canada
  Ottawa ON K1A 0S9
  1-819-956-4802

- The Family Law Branch will from time to time prepare information sheets updating the address and phone numbers in this booklet and advising of any new provincial legislation. These updates will be available from:

  Family Law Branch
  Manitoba Justice
  705 - 405 Broadway
  Winnipeg MB R3C 3C6
  945-0268
  Fax: 948-2004
  Toll-free: 1-800-282-8069 (Ext. 0268)

- More information may be available on the Manitoba government's Internet site: www.gov.mb.ca. Check the Justice department site for family law updates.

CHAPTER 2

THE COURT SYSTEM AND PROCEDURES AND ALTERNATE DISPUTE RESOLUTION

LEVELS OF COURT

There are three levels of court in Manitoba that deal with family cases: the Provincial Court, the Court of Queen's Bench (Family Division) and the Court of Appeal.
Web site: www.manitobacourts.mb.ca

The Court of Queen's Bench (Family Division) is a unified family court that hears all family matters throughout Manitoba. The judges of the Family Division specialize in family law. The Family Division was created so the court could respond more sensitively to the needs of people involved in family disputes. Family Conciliation, a provincial government service staffed by professional counsellors, works with the court to assist families to resolve custody and access issues.

The Provincial Court can hear some types of family cases, but only in northern and some rural areas where access to the Court of Queen's Bench (Family Division) is difficult. Only the Court of Queen's Bench (Family Division) can deal with applications for divorce, division of marital property and adoption.

The Court of Appeal hears appeals from people who are not satisfied with a decision of the Court of Queen's Bench or the Provincial Court.

From time to time the Supreme Court of Canada will consider appeals from the Manitoba Court of Appeal on family law issues. The person seeking to appeal must first obtain permission *(leave)* from the Supreme Court of Canada.

A GENERAL DESCRIPTION OF FAMILY DIVISION PROCEDURES

The following description of court procedures in the Court of Queen's Bench (Family Division) is very general and applies mainly to separations and divorces. Court procedures in other family matters, such as child protection and adoption, are different in some respects, and you should also read Chapters 12 and 13 for more information on how the court system operates in those cases.

⚖ Starting a Proceeding

People involved in a legal dispute are called the parties. Anyone who wants the assistance of the court must ask for it by applying to court. This is done by filing specific documents in the court office. Once these documents have been filed, the court proceedings have started. The document that begins court proceedings is usually called a *petition*, an *application*, or sometimes a *statement of claim*. The party who files the documents is called the *petitioner*, the *applicant*, or sometimes the *plaintiff*.

⚖ Notice

Other parties involved in the dispute (such as a spouse or a parent) usually must be notified of the application *(served)* so that they will also have an opportunity to present their position to the court. This is usually done in a document called an *answer*. Sometimes, where a party cannot be found to be served, the court will allow the case to proceed anyway. Usually in these cases the court will require some kind of alternative notification, for example a notice in a local newspaper *(substitutional service)*.

⚖ Uncontested Proceedings

If the other party (usually called the *respondent*) does not file an answer to the application within the time the court allows, the hearing may proceed without the respondent. The applicant may submit documents to the court, for example, financial information. The applicant will testify under oath or affirmation and may call witnesses to testify on his or her behalf. These witnesses may include the respondent, who may be required to attend court by a *subpoena*. At the conclusion of the hearing, the court will make an order.

⚖ Interim Orders

Family law cases often take many months and sometimes even years to be completed. Many issues need to be resolved much earlier, at least on a temporary basis, for example, parenting arrangements, child support and financial disclosure. For this reason, either party may make a court application *(a motion)* for a temporary order *(interim order)* at any time after court proceedings have been started. The applicant must serve the motion documents on the other party unless the applicant can convince the judge that serious harm would result if notice were given to the other side.

The parties give their evidence by means of *affidavits*. An affidavit is a document in which a person sets out the facts relevant to the motion and swears, or solemnly affirms, the truth of the statements. The affidavits must not contain irrelevant or purely inflammatory statements. If they do, the court may reject them or parts of them and penalize the party who filed them.

A judge reviews the filed documents, and the parties can argue their case before the judge at an appointed hearing time. The parties usually do not present oral evidence at the interim hearing.

⚖ Cross-examinations on Affidavits

Before the hearing of an interim motion, anyone who made an affidavit may be questioned under oath or affirmation by the opposing party or his or her lawyer. This *cross-examination* takes place outside court, usually in a lawyer's office. A court reporter is present and records all the questions and answers and puts them in a document *(transcript)*, which is given to the judge before the interim hearing.

⚖ Consent Orders

If at any time in the proceeding, the parties can agree on any issues in their dispute, the court can issue a *consent order* without the parties having to attend for a court hearing.

⚖ Pre-trial Procedures

Before the final court hearing *(trial)*, there are several court procedures which are intended to ensure that the parties are ready for the trial and to resolve as many issues as possible to shorten the trial or eliminate the need for it altogether.

- Case Conferences

When a petition is filed in Winnipeg, it may be selected for the court's case management program. The purpose of case management is to get cases dealt with as efficiently as possible. The parties and their lawyers must attend meetings with a judge *(case conferences)* to discuss the case. The judge tries to help the parties settle their dispute, or as many issues as possible. If a trial is necessary, the judge will require the parties to exchange information and do whatever else is needed to prepare the case for trial.

- Pre-trial Conferences

In all cases, the parties and their lawyers must attend at least one meeting with a judge before a trial takes place. This *pre-trial conference* is like a case conference—the judge tries to get the parties to reach agreement to resolve the case, or at least narrow the issues for trial. The judge also makes sure the case is ready to proceed to trial, so that there are no unnecessary delays or surprises once the trial starts.

- Examinations for Discovery

Often a party will need more information about the claims being made by the other party. People involved in a legal dispute can require the other party to provide relevant documents and to come to an *examination for discovery*, which is like a cross-examination. The examination for discovery takes place outside court, usually at a lawyer's office. The party requiring the examination can ask the other party questions about the case, for example, the party's plans for caring for the children and his or her financial situation. A court reporter records all the questions and answers, and the printed record *(transcript)* may be used at the trial.

⚖ The Trial

At the final court hearing, each party will have the opportunity to testify under oath or affirmation and call witnesses to testify on his or her own behalf. Everyone who testifies at a court hearing may also be cross-examined by the other party or his or her lawyer. After all the evidence is given, each party can make a final presentation to the court *(argument or submission)*. Each party summarizes the evidence and the law and tries to convince the judge that his or her position is the right one.

After the hearing, the judge will consider all the evidence, which includes the testimony given in court, any out-of-court examinations filed by the parties, and any documents accepted by the judge as evidence during the trial. The judge will also review any legislation or case law submitted by the parties. The judge will make a decision and give it to the parties, either orally in court or in a written document *(reasons for decision)* usually issued at a later time.

The parties or their lawyer(s) are responsible for preparing a written order in the proper form for the court to sign. Each party should receive a copy of the signed order. A project is under development to generate written orders from a computer in the courtroom at the time the judge pronounces the decision.

⚖ Particular Proceedings

- Uncontested Matters

Where a petition is not opposed, the petitioner can submit his or her evidence in affidavits and does not have to appear in court. After reviewing the documents, the judge can grant the orders requested, or order that additional affidavit evidence be given, or order that evidence be given in court on some or all of the issues.

- Variations

  Parties sometimes want a final order to be changed. For example, the party with whom the children reside may need more money for the children. If the other party agrees to the change, the parties can obtain a consent order from the court without having to appear in court. If the other party does not agree, the party wanting the variation will have to file an application in court with an affidavit explaining why the change should be made. The other party may file an affidavit in reply. Usually, the hearing will proceed like a contested interim motion. The judge will make a decision based on the affidavits filed, and any cross-examinations, but there will not be a trial with testimony given in court.

⚖ Appealing a Court Order

A party who is unhappy with the court's decision on any matter may appeal that decision to a higher court. Appeals must be filed within certain time limits set out in the legislation or court rules that apply to the case. For example appeals of orders made by a judge under *The Family Maintenance Act* of Manitoba must be filed within 30 days of the filing of the order with the court. Appeals of orders under the federal *Divorce Act* must be filed within 30 days after the court made the order. It is important to get legal advice quickly if you wish to appeal an order.

⚖ Court Offices

A list of court offices appears in Chapter 17, Important Addresses and Phone Numbers.

ALTERNATE DISPUTE RESOLUTION

⚖ Mediation

Separating spouses and parents should consider mediation for resolving their difficulties before plunging into what may be a very costly and hurtful court battle. A *mediator* is a neutral third party who helps people reach their own agreement. Mediation is **not** appropriate for every family, for example, where there is family violence or a power imbalance between the parties.

Mediation on parenting issues is available at no cost through trained mediators at Family Conciliation, a provincial government service (see Chapter 5, Custody). There are also a few social workers, psychologists, lawyers and other persons in the private sector who offer mediation on parenting and financial issues on a fee-for-service basis. Many of these people advertise in the Yellow Pages. You may also contact Family Conciliation, Family Mediation Manitoba and Family Mediation Canada for a list of people who do mediation. There are no laws requiring people who practise as mediators to have any training or qualifications. Before retaining a mediator, it is important to ask about the person's qualifications, for example, whether the mediator has been certified by Family Mediation Canada.

For further information, contact:

Family Conciliation
1430 - 405 Broadway
Winnipeg MB R3C 3L6
945-7236
Fax: 948-2142
Toll-free: 1-800-282-8069 (Ext. 7236)

Family Mediation Canada
528 Victoria Street North
Kitchener ON N2H 5G1
1-519-585-3118
Fax: 1-519-585-3121
E-mail: fmc@fmc.ca
Web site: www.fmc.ca

Family Mediation Manitoba
P.O. Box 2369
Winnipeg MB R3C 4A6
Web site: www.fmm.winnipeg.mb.ca

⚖ Arbitration

Another way of dealing with a dispute outside court is arbitration. An *arbitrator* is an independent person, often a lawyer, who the parties have agreed can hear and decide their dispute. The arbitration process is similar to court but simpler and less formal. Sometimes when people enter into a separation agreement (see Chapter 4, Separation and Divorce) they agree that if either want a change in the agreement in the future, they will use arbitration rather than go to court.

CHAPTER 3

MARRIAGE

GETTING MARRIED

Legal marriage gives status to individuals as husband and wife, resulting in certain rights and obligations. The law places some restrictions on who can enter into a valid marriage. There are also rules about how a valid marriage takes place.

⚖ Who Cannot Legally Marry?

- **Closely related persons:** A man may not marry his grandmother, mother, granddaughter, daughter or sister. Similarly, a woman may not marry her grandfather, father, grandson, son, or brother.
- **Persons of the same gender:** The parties to the marriage must be a man and woman.
- **Persons certified as mentally disordered** cannot marry **unless** a psychiatrist certifies in writing that they are able to understand the nature of marriage and its duties and responsibilities.
- **Persons under 18 years of age** *(minors)* cannot marry unless:

  ❖ **Where the minor is over 16:**

  - both of the parents give their written consent, or
  - where the parents are separated, the parent with whom the minor is living gives written consent, or
  - a judge gives written consent, or
  - where a child-caring agency or the Director of Child and Family Services is the child's guardian, the Director or a judge gives written consent, or
  - where one parent is dead, the other parent gives written consent, or
  - where both parents are dead, the child's guardian gives written consent

  ❖ **Where the minor is under 16:**

  - only if a judge gives written consent to the marriage.

Anyone of any age who has been divorced, or whose spouse has died, may remarry without the consent of any other person.

⚖ How a Valid Marriage Takes Place

- **Marriage licence**

  ❖ The couple must first get a marriage licence, unless they both regularly attend a place of worship and banns declaring their intention to marry have been proclaimed during a religious service. Marriage licences may be obtained from authorized businesses throughout the province. In addition, in Winnipeg, apply at Vital Statistics, at 254 Portage Avenue. Outside Winnipeg, you can also apply at the nearest office of either Manitoba Health or Manitoba Family Services and Housing.

  ❖ The couple must apply together for the marriage licence. It must be obtained at least 24 hours before their wedding unless the person performing the ceremony is persuaded that the time period should be waived because of exceptional circumstances. The wedding must take place within three months after the licence was issued.

▪ Ceremony

There must be a ceremony, either religious or civil. A civil ceremony is a non-religious rite and must be performed by a *marriage commissioner*. Vital Statistics has a list of marriage commissioners who are authorized by law to perform civil marriages in Manitoba. A marriage ceremony, whether religious or civil, may take place anywhere in Manitoba—for example, in a church, private home, park or hotel. At least two witnesses must be present.

For further details about the requirements that must be met before entering into a marriage and the relationships that prevent a legal marriage, contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
945-3727
Fax: 945-0424
Toll-free: 1-800-282-8069 (Ext. 3727)

UNMARRIED OR COMMON-LAW RELATIONSHIPS

Some people think that after a man and woman live together as husband and wife for a certain number of years, they become legally married, although they have never formally married. This is not true. These kinds of relationships, often called common-law relationships, are not the same as legal marriages. However, the law does give unmarried partners, or common-law partners, in certain circumstances, certain rights and responsibilities. Some of these rights and responsibilities are given to both same-sex and opposite-sex common-law couples. See Chapter 16, Unmarried Relationships.

THE RIGHTS AND DUTIES OF MARRIED SPOUSES TO EACH OTHER WHILE LIVING TOGETHER

When spouses separate, the law sets out their rights and duties to each other, for example, how property is to be divided and who is to pay support and how much. Chapters 8 and 9 explain these rights and duties.

Even when spouses are still living together, they have certain legal rights and responsibilities to one another. Some of these are explained below.

⚖ Financial Support

The Family Maintenance Act of Manitoba states that both spouses have a duty to financially support and maintain each other while living together. This duty can be met by earning income outside the home or by running the household. In both situations the spouses equally contribute to the welfare of the family. The right to financial support includes the right to receive reasonable amounts for clothing and other personal expenses on a regular basis, and the right to spend this money without interference from the other spouse.

⚖ Financial Information

The Family Maintenance Act gives spouses the right to request and receive financial information from each other while they are living together. For example, a spouse is entitled to information such as copies of income tax returns and itemized statements of earnings, assets and liabilities. If a spouse does not provide this information when requested, the court can order the spouse to provide the information and pay the other spouse a penalty of up to $5,000.

Property

Use of Family Assets

The Marital Property Act of Manitoba says both spouses have the same right to use and enjoy family assets. A family asset is property that is owned by one or both spouses and is used for family purposes such as shelter, transportation or recreation. Examples of family assets are the family home, household furniture and appliances, family car, summer cottage, lawnmower and gardening tools. However, one spouse does not have the right to use the other's personal belongings (for example, clothing and other items that are not usually used by both spouses).

The Act does not prevent a spouse from selling or otherwise dealing with a family asset that is owned by the spouse alone, unless such actions would seriously threaten the family's financial security or the asset involved is the family home.

The Family Home

The Homesteads Act gives special protection to the family home, or *homestead*, which can be a house, a farmhouse or a condominium. Where the homestead is owned by one spouse alone, the other spouse must consent in writing before the owner-spouse can sell, mortgage, rent for three years or more, or otherwise dispose of it.

Where the spouses live on a farm, the special protection applies to not only the farm dwelling but also up to 320 acres of land.

Where both spouses are the registered owners of the family home, both must agree in writing to any sale, mortgage, rental or other transaction involving it. A spouse who has disposed of the homestead without the other spouse's consent may be liable to that spouse for damages. The defrauded spouse may also be entitled to seek compensation from the Land Titles Assurance Fund.

Accounting and Equalization of Marital Property

The Marital Property Act gives spouses the right to apply at any time to the court for an accounting and equalization of "marital property." This basically is property acquired by one or both of the spouses while they are married and living together. The court can order an accounting even if the parties are living together. See Chapter 9, Property, at page 47 for further details.

Pensions

- *The Pension Benefits Act* of Manitoba applies to pension plans sponsored by an employer for employees in Manitoba. Every such pension plan must state that the pension benefits payable to a married plan member will be in the form of a *joint pension*. This type of pension provides the spouses with a monthly pension guaranteed for the lives of both of them.

  If a plan member, or his or her spouse, dies after the member retires, the survivor is entitled to pension benefits of at least two-thirds of the original amount. This provides protection for surviving spouses, as they are guaranteed a minimum pension income after the other spouse dies. Spouses may give up this protection by completing and signing a spousal waiver form.

  Employers must provide a yearly statement about the pension plan to every plan member. In addition, spouses of plan members are entitled to a copy of the statement if they request it. For more

information about *The Pension Benefits Act*, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
945-2740
Fax: 948-2375
Toll-free: 1-800-282-8069 (Ext. 2740)

- The federal *Pension Benefits Standards Act, 1985* applies to most federally regulated pension plans (e.g., the airlines and railways) and provides similar protection to spouses. For more information about this federal legislation, and other federally regulated pensions, contact:

  Office of the Superintendent of
  Financial Institutions of Canada
  255 Albert Street
  Ottawa ON K1A 0H2
  Toll-free: 1-800-385-8647
  Internet: www.osfi-bsif.gc.ca

CHAPTER 4

SEPARATION AND DIVORCE

THE DIFFERENCE BETWEEN SEPARATION AND DIVORCE

Spouses who have separated are still legally married, even if there is a court order of separation. Manitoba law covers separation matters such as parenting arrangements (*custody* and *access*), financial support for separated spouses or their children, and division of property.

Federal law applies to spouses who are seeking a divorce, and is the same throughout Canada. When a court grants a divorce, the marriage is ended. The *Divorce Act* sets out how a divorce can be obtained. It also deals with matters related to divorce, such as parenting arrangements and financial support. The *Divorce Act* provisions on parenting arrangements and support are very similar to the provincial laws in these matters.

A court order or formal separation agreement is not required for spouses to separate—they may simply live separate and apart. However, particularly when there are children or questions of property or financial support, it is wise for separating spouses to have a written separation agreement or court order.

SEPARATION AGREEMENTS

Many couples settle all issues between them by entering into a written separation agreement. Through such an agreement, they can avoid court proceedings, or shorten existing proceedings, except the proceedings needed to obtain the divorce order to end their marriage.

A separation agreement will usually deal with matters such as:

- parenting arrangements (custody and access);
- financial support;
- division of marital property;
- the right to live in the marital home;
- responsibility for family debts; and
- estate rights on the death of each spouse.

Sometimes parties work out the main features of their agreement on their own or with the assistance of a mediator. Lawyers can then provide advice and put their agreement in a more detailed and formal document.

Often couples are unable or unwilling to make an agreement on their own and each party hires a lawyer to bargain or negotiate the terms of an agreement for them. Sometimes, couples want to cut legal costs by having one lawyer act for both of them. This is not possible. The lawyer can only represent one party.

It is important that both parties have independent legal advice, as a separation agreement is a legally binding contract. If a spouse fails to meet the requirements of the agreement, the other spouse may sue in court. If the agreement is a bad bargain for one spouse for example, the spouse gets less property than they would be entitled under the law, a court is unlikely to interfere and make changes. The court may set aside an agreement if a spouse convinces the court the agreement was made because of fraud or unfair pressure.

A separation agreement can be much more detailed than the usual court order, and more tailored or sensitive to the particular family's needs. However, it is not a court order and can be more costly and difficult to enforce. For this reason, in Manitoba, provisions in a separation agreement for the payment of support can be enforced through the Maintenance Enforcement Program in some circumstances. See Chapter 11, on enforcement for more information on this.

COURT ORDERS ON SEPARATION

When spouses separate and one or both wants or needs the court's assistance, but they don't wish at that time to start divorce proceedings, either the husband or a wife may apply to court under *The Family Maintenance Act* for a court order. The court can make orders of separation, custody, access, child and spousal support, financial disclosure, sole occupancy of the family home, and protection. An order can be granted on an interim basis *(interim order)* or a final basis *(final order)*.

Order of Separation

A spouse does not need to prove any fault or misconduct by the other spouse to obtain an order of separation. It does not matter if the spouses have agreed to separate or not, or if one spouse may have been more "at fault" than the other. If the judge feels that the spouses may be able to reconcile, the judge may postpone the proceedings to allow the spouses to consult a marriage counsellor.

Orders of Custody and Access

The Act provides for orders of *custody* (the right to care and control of a child) to one parent alone or to both parents *(joint custody)*. Orders of *access* set out the kind of contact a parent without custody will have. Chapter 5 explains the law in this area.

Orders of Financial Support

Either spouse can ask the court to order the other spouse to pay maintenance to support the spouse or any children in his or her care. Chapter 7 and Chapter 8 explain the law in this area.

Order of Financial Disclosure

Both spouses have the right to request and receive financial information from each other, for example, tax returns and statements of earnings, assets and debts. This right exists both before and after separation. If a spouse fails to provide the information when requested, the other spouse can apply to court for an order of financial disclosure and for an order requiring the spouse to pay a penalty of up to $5000. The court may also order a spouse's employer to provide financial information about the spouse.

Order of Sole Occupancy

The court can order that one spouse alone will have the right to live in the marital home. This kind of order prevents the other spouse from living in the home even if she or he owns it.

Order of Postponement of Sale

Where the court gives a sole occupancy order to one spouse and the other spouse owns all or part of the home, the court can also postpone any rights that the other spouse has to divide, rent, sell or otherwise dispose of the home.

Orders of Protection

A spouse may apply to court at any time for orders stating that:

- the other spouse must not molest, annoy or harass him or her, or any child in his or her care (a *non-molestation order*); and

- the other spouse must not enter the home or workplace of the applicant spouse (a *prohibition order*).

In granting orders of protection, the court will consider any history of violent behaviour by the other spouse and the possibility of future violence or harassment.

New laws will be coming into effect which will change the types of orders of protection the courts can make (see Chapter 10, Family Violence).

If at any time the safety of a spouse, or his or her children, is threatened, the police should be contacted at once for assistance. For other protection and help available to an abused spouse, see Chapter 10.

Order of Costs

The court usually orders the spouse who has been unsuccessful in the court to pay part, or sometimes all, of the legal costs of the successful spouse. For example, a spouse who has refused to pay a reasonable amount of support may be ordered to pay costs, or a spouse who has been uncooperative about financial disclosure may have to pay costs.

DIVORCE

Residency Requirement

An application for divorce can be made in a province only if one of the spouses has been a resident of the province for the last year or more.

Joint Petitions

Usually one spouse files the application for divorce, called a *petition*, although the *Divorce Act* allows spouses to file the petition together. Some spouses feel a joint petition is more appropriate where they are in agreement on all issues.

Grounds for Divorce

Spouses cannot obtain a divorce simply by agreeing to it. The court must be given proof that *marriage breakdown* has occurred. Marriage breakdown is the sole ground for divorce but it can be established in one of three ways: separation of one year or more; adultery; or mental or physical cruelty.

• Separation of One Year or More

Either or both spouses may apply for a divorce on the ground of marriage breakdown due to a separation of a year or more. The separation does not have to be a joint decision—it does not matter if only one spouse wants the separation as long as a separation actually occurred.

A petition can be filed in court before the full year of separation has passed, as long as the spouses are actually separated at the time the divorce petition is filed. The court cannot grant the divorce until the spouses have been separated a full year, but filing the petition early means it can be heard quickly after the year has elapsed.

The required year of separation is not broken if the parties live together (*cohabit*) again in an attempt to reconcile, for no more than 90 days in total.

- **Adultery**

  A spouse can seek a divorce at any time if the other spouse has committed adultery, that is, the spouse voluntarily had sexual intercourse with another person. Even if spouses are separated from each other, voluntary sexual intercourse is adultery and can be used by the other spouse to ask for a divorce.

  The spouse does not need to be separated to apply. The spouse must prove to the court that the adultery took place.

- **Cruelty**

  A spouse can also seek a divorce at any time on the basis that the spouse has been treated with cruelty by the other spouse. Cruelty can include acts of physical violence and causing severe mental anguish. The spouse applying for the divorce must prove that the cruelty took place, that it seriously affected him or her and that it made living together unbearable.

The Divorce Hearing

Uncontested divorce applications may be decided on the basis of either written, sworn statements *(affidavits)* or evidence given by the applicant spouse under oath at a short court hearing. Many spouses prefer to have an uncontested divorce decided on the evidence in affidavits, so they do not have to appear in court.

Where the spouses do not agree on the divorce, or on issues relating to the divorce (such as custody or support), a formal court hearing with sworn evidence is necessary. If the judge feels the spouses may be able to reconcile, he or she may adjourn the divorce hearing to give them the opportunity to do so.

The Divorce Judgment

If after considering the evidence, the judge believes that marriage breakdown has been established, the judge grants a preliminary order called a *divorce judgment*. The parties can't remarry until the divorce becomes final *(takes effect)*. Neither spouse has to apply for their divorce to become final. The divorce automatically becomes final on the 31st day after the divorce judgment is granted, unless the court has ordered that it is final sooner, or one spouse appeals it.

After a divorce becomes final, the former spouses should obtain a *certificate of divorce* from the court office. This document proves that the divorce has taken place, and will need to be produced if either person wishes to marry again.

Other Orders Available on Divorce

A judge dealing with a divorce application can also consider questions of custody, child and spousal support, as well as matters governed by provincial law, such as claims for property and protection orders. Provisions relating to such matters are contained in a separate order. The court can also grant temporary orders *(interim orders)* of custody and support where such decisions are needed before a trial can take place and the issues resolved on a final basis.

CHAPTER 5

CUSTODY

The legal term *custody* refers to all the rights and duties related to the care of a child. This includes the right to make all important decisions about the child's care and upbringing *(legal custody)*, and the right to the actual everyday physical care and control of the child *(physical custody)*.

Under *The Family Maintenance Act*, both parents of a child have equal rights to the custody and control of their child, if they have lived together after the child's birth and no court order has set out a different arrangement. It does not matter if they are married or unmarried. However, if the parents never lived together after the child's birth, the parent with whom the child is living is deemed to have sole custody and control.

COURT ORDERS OF CUSTODY

⚖ Best Interests of the Child

When parents separate and can't agree on parenting arrangements, either parent can ask the court to make the decision for them. The court encourages parents to resolve the dispute through mediation. The court has the power to refer parents to a mediator at Family Conciliation, a branch of the provincial department of Family Services and Housing, that works closely with the court. If mediation is inappropriate or mediation is unsuccessful, the court will make a decision based on the *best interests of the child.*

The court will take into account a number of factors, such as:

- care arrangements before the separation. (For example: who looked after the child most of the time? Who took the child to the doctor and dentist? Who arranged extra-curricular activities? Who dealt with the child's school and teachers?);
- the parent-child relationship and bonding;
- parenting ability;
- the parents' mental, physical and emotional health;
- the parents' and the child's schedules;
- support systems. (For example, assistance and involvement from grandparents and other close relatives.);
- sibling issues. Generally, brothers and sisters should remain together, but under some circumstances, it may be necessary to consider separating the children; and
- the child's special needs. (For example, the child has a serious medical condition and one parent is better able to handle the care required.)

The court will also consider the child's wishes. There is no magic age for when a child has the right to decide where he or she is going to live. The court gives more weight to the child's wishes as the child matures. An older teenager's wishes will often be decisive.

Children shouldn't be put in the position of having to choose one parent over another as it may be psychologically damaging. Children should never be placed in the middle of their parents' dispute. As a general rule, parents should never involve their children directly in the court proceeding by getting them to provide or sign affidavits or testify. This is very destructive and almost always unnecessary. If the court needs to know the children's wishes, a parenting expert should interview the children and report to the court. This report would be part of a complete assessment of parenting arrangements for the family. See page 29 on assessments.

The judge will also look at each parent's willingness to support the other parent's involvement with the child. For example, if one parent talks badly about the other parent to the children or in the children's presence, and prevents the other parent from seeing the children without good reason, the judge may decide that parent should not have custody.

The law encourages the continuation of a healthy relationship between both parents and their children after separation. Unless there is a risk to the children, generally it is best for children to have contact with both parents.

Sole Custody

A court order of custody or *sole custody* to a parent means that parent has both legal and physical custody of the child. He or she makes the important decisions about the child's education, extracurricular activities, health and religion, and the child lives most or all of the time with that parent.

When the court makes a sole custody order, it will usually give the other parent access, the right to have contact with the child. What an order of "access" or "reasonable access" means depends on the arrangements the parents make between themselves. For example, it may mean that the child lives with the other parent two or three days a week, or that the child sees the other parent once a week.

Sometimes, especially when the parents have difficulty cooperating with one another, the court may order *specified access*. This kind of order will lay out exactly when and under what conditions the other parent can have contact with the child. Where there is tension and conflict between the parents, the court may order that a third party be involved to facilitate the access, for example, by helping with the pick-ups and drop-offs. Where the court is concerned about the child's safety in the care of that parent, the court may order that another person supervise the access.

Parents who do not have custody (sometimes called *non-custodial parents*) have rights to information about the child. The federal *Divorce Act* gives a parent with an access order the right to ask for and be given information as to the health, education and welfare of a child, unless a court orders otherwise.

The Family Maintenance Act says the non-custodial parent has the same right as the custodial parent to "receive school, medical, psychological, dental and other reports" about the child, unless a court orders otherwise. The provincial legislation makes it clear that this is a right to information only. It is not a right to be consulted about or participate in decision-making about the child.

Joint Custody

The court often orders that the parents have joint custody, with one parent having *primary physical care and control*, and the other parent having *physical care and control as the parties may agree* or at specified times. This kind of order means that both parents have legal custody of the child—joint decision-making power- but

one parent looks after the child most of the time and makes the everyday decisions about the child's care.

Sometimes the court will state in the order that the parties must consult with each other on all major decisions respecting the child, but that one parent has the right to make the final decision if they can't agree. The court is more likely to make a joint custody order where the parents agree on it and appear to be able to cooperate with one another for the benefit of the child.

Shared Custody

The court can order that the parents not only have joint legal custody but also joint physical custody—that is the child will live with each parent more or less equally. The court is very unlikely to make this kind of order where one party is opposed to it. Shared custody requires parents to be able to effectively communicate and cooperate with one another.

Assessments

Where parents can't agree on custody or access, the court may order that an independent expert evaluator investigate and provide an assessment report to the court. The person who does the assessment is a family relations specialist employed or retained by Family Conciliation, unless the parents agree to a different person or agency. The parents do not pay for the assessment if it is prepared by Family Conciliation. Parents cannot be forced to participate in the assessment, but a judge may look negatively on a parent's refusal to cooperate in an assessment.

The evaluator interviews and observes the parents and the children and may also speak to extended family members (grandparents, for example) and other persons, such as the child's teachers. The evaluator writes a report with recommendations and gives it to the court and the parents. If the parents still don't agree on the parenting arrangements and there is a trial, each of them has the right to ask that the evaluator come to the trial and to ask the evaluator questions (*cross-examine*) about the report.

A parent does not have the right to have an assessment prepared by Family Conciliation. The court will order it only if the court thinks it is necessary to resolve the dispute. Parents can hire a private practitioner at their own expense, but a private assessment should have the agreement, cooperation and participation of both parents.

Moving Away

The court may require a custodial parent to get the other parent's consent before moving their child from Manitoba, or from the city or area in Manitoba in which they live. The court may require the custodial parent to give the other parent notice of any intended move. This means the other parent must be told well in advance of any planned move so that the other parent can apply to court if it is a problem.

When parents have joint custody (under a court order or not) neither parent has the right to move the child without the other parent's consent, unless a court order provides otherwise. Where the court has ordered specified access, the custodial parent should also not move the child without the non-custodial parent's consent. It is very important to consult a lawyer in these situations well before the move is to take place, as a court order may be necessary. See Chapter 11 on enforcement.

Where One Parent Lives Outside Manitoba

As a general rule, when the child lives in Manitoba, a parent who wants an order of custody or access must apply to a Manitoba court. This is the case even if that parent lives outside Manitoba. In an application under the *Divorce Act*, a parent may make a claim for custody or access in a court in a province where one of the parents normally lives, even if the child does not live there. However, the court will usually transfer the proceeding to the province where the child normally lives.

Changes in Custody Orders

Where there is a court order of custody and an important change occurs affecting a child, either parent may ask the court to change *(vary)* the order. One example of this might be where a teenage child wants to spend more time with a parent than the court order allows, or a custodial parent wants to change the access order because the other parent is not caring for the child adequately during visits. If the parents can't agree on changing the order, they may choose to attend mediation before asking the court to decide the issue.

PARENTING AGREEMENTS

Many separating parents prefer to resolve their dispute over parenting arrangements outside of court by reaching parenting agreements. The intent is to keep the stress and disruption of separation at a minimum for the children's sake.

This approach provides parents with the freedom to make parenting arrangements that best suit their family. For example, they may not want to use the traditional legal terms of custody and access that some people feel are not appropriate to describe a parent-child relationship. Traditional legal language is not required and they may want to have an agreement which recognizes joint responsibility and commitment to care for the child.

Parenting agreements usually cover such matters as where the child is to live, how the parents will share the child's time, and how decisions about the child will be made.

Most agreements will also contain a provision that the parties can amend the agreement if an important change occurs, and that if they can't agree on the amendment to the agreement, either can apply to court for an order. Some agreements state that as an alternative, the parties will go to mediation or arbitration to resolve the issue.

MEDIATION

Lawyers can help parents negotiate an agreement. A mediator, whether a lawyer, a social worker, or other professional, can help parents to make their own agreement.

Family Conciliation provides mediation on parenting issues at no cost. Before mediation begins, the parents are interviewed to determine whether mediation is appropriate in their case. Mediation is not considered appropriate, for example, where there has been family violence.

The parents must attend a supportive information program, ***For the Sake of the Children.*** Once parents have attended the program and have decided to proceed with mediation, Family Conciliation will assign a mediator. The mediator will meet with the parents separately and together, and sometimes with the children. The mediation is confidential and nothing said in the mediation can later be used in a court custody proceeding.

If mediation is successful and the parents agree on their arrangements, the mediator puts the agreed parenting arrangements in writing and advises the parents to review it with their lawyers. The lawyers will then put the mediated parenting agreement into a formal agreement, usually as part of a complete separation agreement that settles all issues between the parents, or in a court order, or both.

There are also mediators in private practice. See Chapter 2 for more information about private mediation.

FOR THE SAKE OF THE CHILDREN PARENT INFORMATION PROGRAM

The purpose of the Manitoba government's ***For the Sake of the Children*** parent information program is to help parents:

- understand what they are going through both legally and emotionally, and
- cope with and adjust to separation, so they in turn help their children adjust.

Professionals who specialize in family conflict resolution and lawyers who specialize in family law issues present the program. There are two seminars, each about three hours long.

The programs focus on how both parents and children experience separation, the costs of conflict, the benefits of keeping conflict low, children's needs at different ages, parenting plans, legal and economic issues, alternatives to court and reorganizing after separation. Videos are used to assist discussion regarding communication with children and the other parent, and new partner issues.

Two different programs are offered in the second seminar. One is designed for parents experiencing lower levels of conflict. This program emphasizes a more direct contact approach to parent communication. The other program is designed for parents experiencing higher conflict and focuses on safe, low-to-no contact approaches to parenting. All participants attend the first seminar. Participants then enroll in either the lower conflict or higher conflict program.

For the Sake of the Children is open to all parents and anyone else who wishes to attend. There is no cost to participants. For more information or to register for a session near you, call from 8:30 a.m. to 4:30 p.m.:

- Winnipeg 945-4257
  Toll-free: 1-800-282-8069 (Ext. 4257)
- Brandon 726-6778
  Toll-free: 1-800-230-1885
- Dauphin 622-2318
- Flin Flon 687-9726
- The Pas 627-8212
- Thompson 677-6497

In Winnipeg, ***For the Sake of the Children*** runs several sessions per week during both days and evenings. Parents should be able to attend the first seminar within a week or so of registering. Schedules vary outside Winnipeg.

CHAPTER 6

PARENTAGE

Children born to married parents and those born outside marriage have equal legal status and rights. In determining matters such as a child's right to maintenance or to inherit from a parent or relative, it does not matter if the child's parents were married or not.

The Family Maintenance Act has provisions for determining the parentage of a child when this is in dispute. For example, a mother may wish to have a certain man legally declared to be the father so that her child may have the right to support from him and the right to inherit from him. A man may want to have the court declare him to be the father of a child so that he can claim custody or access.

The Act sets out certain circumstances where it is presumed that a man is the father of a child. These are:

- he was married to the child's mother when the child was born;
- he was married to the mother and the marriage ended within 300 days before the child was born (the court may allow a longer period);
- he married the mother after the child's birth and acknowledged that he is the father;
- he and the mother have acknowledged in writing that he is the father;
- he and the mother were living together in a relationship of some permanence at the time of the child's birth;
- the child was born within 300 days after he and the mother stopped living together in this type of relationship (the court may allow a longer period); or
- he has been found by a court to be the father.

If any of these circumstances *(presumptions of paternity)* apply, the court will make an order declaring the man to be the father of the child, unless the man proves to the court that he is not the father. If none of the presumptions of paternity apply, the person seeking the declaration must prove that the man is the father of the child. Blood tests may be helpful to decide a child's parentage.

Where a presumption of paternity applies, an application for a declaration of parentage can be made where either the father or the child is alive. For example, an application for an order declaring a man to be the father of the child can be made after the man's death. If none of the presumptions of paternity apply, an order will not be made unless both the man and the child are alive.

Once the court has declared a person to be a child's parent, the order is forwarded to the Vital Statistics agency of the Government of Manitoba and the registration of birth for the child is amended accordingly.

CHAPTER 7

CHILD SUPPORT

Both parents have an equal duty to provide financial support for their children, whether or not there is a court order. This responsibility exists even where a court order or agreement gives a parent no right to see or even contact the children. A parent who remarries and starts a new family is still responsible for supporting the children of a previous marriage.

A parent is responsible for his or her own children, by birth or adoption. A parent must also support a partner's children, if that parent acted as a parent to the partner's children before the separation. Anyone who stands in the place of a parent *(in loco parentis)* to a child is obliged to support the child.

HOW LONG MUST A PARENT PAY SUPPORT?

In Manitoba, parents must support a child until the child is 18. Support may be required past the age of 18 if the child is still dependent because of illness or disability or if the child is still in school or completing his or her education at university or other post-secondary institution. Child support orders do not automatically end when a child turns 18 or is no longer dependent, unless the support order specifically says that it does. If the support order does not specify when child support ends, an application must be made to court to change *(vary)* the order.

HOW MUCH?

In Manitoba, the court must decide the amount of a child support order under *The Family Maintenance Act* by following the rules and the tables contained in the Manitoba *Child Support Guidelines*. The Manitoba guidelines also apply to orders under the federal *Divorce Act*, unless one of the parents lives outside Manitoba. In that case the *Federal Child Support Guidelines* apply.

MANITOBA CHILD SUPPORT GUIDELINES

Child Support Tables

The guidelines set out how the court must calculate child support. The guidelines contain tables of child support amounts and the rules for using the tables. There is a separate table for every province and territory, but there is little difference between them. The variations between provinces and territories are a result of different tax rates. The table to be used is the one for the province where the paying parent lives. There are different rules when the paying parent lives outside Canada or can't be found. Then the table for the province where the recipient lives is used.

The tables set out the monthly amount to be paid. The amount depends on the total annual income (before taxes) of the payor and the number of children to be supported under the order. For example, if the payor lives in Manitoba, earns $30,000 a year, and the order is for three children, the payor will pay $556 a month under the tables in effect in March 1999.

Special or Extraordinary Expenses

In some circumstances, the court may add an amount to the basic table amount of support for certain *special* or *extraordinary expenses*. The expenses that may be claimed are:

- child care expenses that the primary caregiver has because of work, school, training, illness or disability;
- health-related expenses over $100 above any insurance coverage, including, for example, medicine, dental care and glasses;
- extraordinary expenses for primary or secondary school or other educational programs that the child needs;
- post-secondary education expenses; and
- extraordinary expenses for extracurricular activities.

The court considers:

- Is the expense necessary for the child?
- Is the expense reasonable considering the parents' means and how the family spent its money before the separation?

In deciding what amount to order, the court considers any financial assistance the primary caregiver gets for the expense (for example, a tax deduction for child care expenses), and both parents' incomes. As a general rule, the parents share the special expenses according to their income. The amount the paying parent pays is usually proportionate to each parent's income, above a certain minimum level. For example, if the paying parent earns twice as much as the receiving parent, and the expense is $75 a month, the paying parent will pay an extra $50 support. If the primary caregiver has little or no income, the paying parent may pay more, up to the total of $75. If the exact amount of a special expense is not known, the court can estimate the amount.

Split Custody

Where the parents have split custody, that is, each parent has primary care of one or more of their children, child support is calculated by figuring out how much each parent would pay to the other for the children in the other's care. The difference between the two amounts is the amount of support the parent who would have to pay more actually pays to the other parent. For example:

> Jane and John have three children. Jane is the primary caregiver for two children and John is the primary cargiver for the third. John earns $30,000, so he would pay a table amount of $420 to Jane for the two children. He also is to pay $50 a month for special expenses, for a total of $470. Jane earns $20,000, so she would pay a table amount of $153 for one child. The difference between the two amounts is $317. The child support order would require John to pay Jane $317 per month.

Shared Custody

If the parents have shared custody, child support is calculated differently. Under the guidelines, in order to be considered shared custody, each parent must have the child at least 40 per cent of the time over the year. In these situations, while the court must take the table amounts into consideration, the court does not have to follow the tables. The court looks at the increased costs of a shared custody arrangement and the complete financial situation, including both parents' incomes, and the needs of the child. This may result in the paying parent paying more or less than the table amount, or the table amount plus special expenses, would have been. Basically, the guidelines allow the judge to decide what is fair and reasonable in the circumstances.

Children over 18

The guidelines also allow this more flexible approach in deciding support for children over 18 years old when the court feels using the guidelines tables is inappropriate. For example, the court may want to take into consideration income the child has from part-time jobs and scholarships, and any additional living expenses the child may have as a result of attending university away from home.

Payor's Income over $150,000

Where the payor's income is over $150,000 per year, the court must order the table amount for $150,000, but the court is free to decide what additional amount of support, if any, is reasonable in relation to the amount of the payor's income over $150,000. In doing so, the court looks at the total financial picture, including both parents' incomes.

Step-children

Where the payor is a step-parent, or another person standing in the place of a parent, the amount of support depends on what the court thinks is appropriate in light of the guidelines and the parents' duty to support the child.

Undue Hardship

The court can make an order for more or less than the guidelines amount if either parent convinces the court that the guidelines amount would cause *undue hardship* to the parent or a child. For example, a paying parent who has to support a child from another relationship, or a paying parent who has unusually high access expenses, or a recipient parent who has unusually high basic living expenses, might claim undue hardship.

The parent claiming undue hardship must also show the court that the standard of living of his or her household would be lower than the standard of living of the other parent's household if the guidelines amount were paid. This means the court can look at the financial circumstances of all members of the parents' household, including new partners.

Special Provisions

Where there are special provisions in an agreement or an order that benefit the child, the court does not have to follow the guidelines, if doing so would be unfair considering the special provisions. For example, the court might decide it shouldn't order the guidelines amount where the paying parent agreed to transfer the family home to the primary caregiver, and the primary caregiver agreed to accept less monthly child support because of that.

Consent Orders

Parents may agree to child support different from the guidelines, but the court will not order the different amount unless it is reasonable. The court will look at the child support guidelines and the financial information the guidelines require the parents to file with the court. (See the section on Financial Disclosure that follows.) If the court does not think the agreed to amount is reasonable, the court may order a different amount or refuse to grant a divorce until the parents agree to an amount that is reasonable or agree to have the court decide the proper amount.

Determining Income

As discussed above, in making a child support order, the court always needs to know the paying parent's income and, in certain cases, the recipient parent's income as well. The table amounts vary according to the payor's total annual income before taxes. This includes the payor's income from all the same sources of income that a person must report in a tax return, for example: employment income, pensions, business income, professional income, commission income, farming income and fishing income, workers' compensation and social assistance benefits.

For people whose only income comes from employment, it is gross pay that is used, not net or take-home pay after deductions. The guidelines do, however, allow the addition and subtraction of some items, such as union and professional dues.

The court will estimate the amount the person is likely to receive in the current year, based on his or her present earnings and other income, and what the person has earned in the past three years.

Amounts that a person shows on a tax return do not always show a person's ability to pay support. For this reason the guidelines allow the court to add an amount to a person's income *(impute income)* in some circumstances. For example, a parent who is not required by law to pay income tax has more disposable income to pay child support than a person who must pay tax, so the court can add an amount to take this into account. Similarly, where a person quits a job to avoid paying support, the court can say the person's income is the same as it would have been if the person hadn't quit.

Financial Disclosure

As discussed, the amount of child support relates to the paying parent's income and in some cases to the recipient parent's income. The guidelines require the paying parent in all cases, and the recipient parent in certain cases, to provide certain financial information to the other parent on request. The basic rule is that a parent must provide income information where it is necessary to decide the amount of the order. The request must be in writing and can be made only once a year, unless there is a child support application before the court.

The information to be provided is as follows:

- a sworn Financial Statement in the form required by the court;
- a copy of every personal income tax return filed by the parent in each of the three most recent taxation years;
- a copy of every notice of assessment or reassessment issued to the parent for each of the three most recent taxation years;
- where the parent is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date (including overtime) or, where such a statement is not provided by the employer, a letter from the parent's employer setting out that information, including the parent's rate of annual salary or pay;
- where the parent is self-employed, for the three most recent taxation years,
  - the financial statements of the parent's business or professional practice, other than a partnership, and

- a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the parent does not deal at arm's length;

- where the parent is a partner in a partnership, confirmation of the parent's income and draw from, and capital in, the partnership for its three most recent taxation years;

- where the parent controls a corporation, for the three most recent taxation years,

  - the financial statements of the corporation and its subsidiaries, and

  - a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation does not deal at arm's length; and

- where the parent is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements.

In addition, if there is a special expenses order, a parent has the right to current information on the special expenses. Where an order was based on a finding of undue hardship, a parent has the right to current information on the circumstances that led to the finding.

When a child support application is made to the court, either or both parents (depending on whose income information is necessary), must file with the court a sworn financial statement and copies of Revenue Canada income and deduction computer printouts showing the parent's income for each of the three most recent taxation years. The court can require the parents to file more financial information.

Parents who do not provide the required information may face serious penalties. They may have to pay the other parent a penalty of up to $5,000 and the other parent's legal costs. Contempt of court proceedings may result.

FEDERAL CHILD SUPPORT GUIDELINES

The *Federal Child Support Guidelines* are the same as the Manitoba guidelines in most respects. For example, the support tables are exactly the same. However, there are some differences between the federal and the Manitoba guidelines. For example, the federal guidelines require parents in all cases to file with the court all the financial documents listed above, but the Manitoba guidelines only require a parent to file with the court a financial statement and Revenue Canada printouts. Another example is that the federal guidelines allow both parents to claim special or extraordinary expenses. To find out more about the *Federal Child Support Guidelines*, contact:

Federal Department of Justice
Toll-free: 1-888-373-2222
Internet: http://canada.justice.gc.ca

CHANGING A CHILD SUPPORT ORDER

A parent can apply to court to change (*vary*) a child support order. The court may change the order if:

- the order was made under *The Family Maintenance Act* before June 1, 1998, the date the Manitoba *Child Support Guidelines* came into force;

- the order was made under the *Divorce Act* before May 1, 1997, the date the *Federal Child Support Guidelines* came into force;

- the order was made under the Manitoba *Child Support Guidelines* or the *Federal Child Support Guidelines* and was based on a table amount and a change has occurred (for example, a change in the payor's income) which would result in a different table amount; or

- the order was made under either the Manitoba *Child Support Guidelines* or the *Federal Child Support Guidelines* and it was not based on a table amount and an important change has occurred.

The court will make the new order under the child support guidelines.

WHERE ONE PARENT LIVES OUTSIDE MANITOBA

⚖ *The Family Maintenance Act*

A parent living in Manitoba can apply for support in the Manitoba courts under *The Family Maintenance Act* even if the other parent lives outside Manitoba. If the other parent is served with notice and agrees to have the Manitoba court deal with the matter, the Manitoba court can hold a hearing and may make a support order that is valid and enforceable outside Manitoba. If the other parent does not agree to the Manitoba court hearing the matter, the order will not be enforceable.

⚖ *The Reciprocal Enforcement of Maintenance Orders Act*

The Reciprocal Enforcement of Maintenance Orders Act of Manitoba provides a procedure for a parent living in Manitoba to obtain a child support order when the other parent lives in a *reciprocating state* outside Manitoba and has not agreed to the Manitoba court dealing with the matter under *The Family Maintenance Act*. Similarly, the Act allows a parent living in reciprocating state to apply there for a support order against a parent living in Manitoba.

A reciprocating state is a province, state or country that has entered into an agreement with Manitoba to assist Manitobans in obtaining and enforcing support orders against a resident in that province, state or country. All Canadian provinces/territories and most American states are reciprocating states, along with many other foreign countries.

An application for a support order under *The Reciprocal Enforcement of Maintenance Orders Act* involves two stages:

- A hearing is held in a Manitoba court, without the parent living outside Manitoba and without notice to him or her, to obtain a *provisional order* of support. The applicant must prove that the children are entitled to support under *The Family Maintenance Act*. The order made at this hearing has no effect, and no support is payable, until the other parent has an opportunity to attend a hearing before a court in the reciprocating jurisdiction in which he or she lives. The evidence considered by the court in Manitoba will be sent to the court in that jurisdiction.

- A hearing is then held by the court in the reciprocating jurisdiction to *confirm* the provisional order. At this hearing, the other parent will have an opportunity to present his or her evidence. The applicant parent living in Manitoba is not required to attend this hearing or hire a lawyer for the hearing. However, in some cases, it may be helpful to do so. The court will determine whether the provisional order of maintenance made in Manitoba should be confirmed. The court may confirm the order in the same amount

ordered by the Manitoba court or with a different amount. The *confirmation order* made by this court is a *final order* of maintenance and is enforceable in the other province, state or country.

A parent living outside Manitoba in a reciprocating jurisdiction can apply for support from the other parent resident in Manitoba through the same type of two-stage hearing process.

If their circumstances change, either parent may apply to have a support order made in this way varied through a similar two-stage procedure. If the laws of the reciprocating state do not allow an order to be varied in this way, the parent may have to make an application in the other state.

A new law will replace *The Reciprocal Enforcement of Maintenance Orders Act* and simplify the existing system. Under the new law, Manitoba parents who want to apply for or vary support obligations will fill out a support application form that will be sent to the jurisdiction where the other parent lives. The other parent will be notified of the application and the court there will make the appropriate support order.

Support orders made in other Canadian jurisdictions, and some foreign countries, can be registered in the Manitoba court and enforced by the Maintenance Enforcement Program. Under the new law, Manitoba parents who feel that a support order made in another Canadian province or territory should not have been made will need to apply to that other court if they wish to challenge it. Manitoba parents who feel that a support order made outside Canada should not have been made will be able to ask the Manitoba court to treat the order as a support application and request a court hearing in Manitoba to set the appropriate amount of support.

The new law is called *The Inter-jurisdictional Support Orders Act*. As of February 1, 2002, the new law is not yet in effect. Contact your lawyer or the Family Law Branch for further information on whether this law is in effect.

The *Divorce Act*

Spouses can apply for child support under the *Divorce Act* in a Manitoba court as long as one of the spouses lives in Manitoba. The other spouse must be served with the petition. Even if they don't agree with the hearing being held in Manitoba, an order from a Manitoba court is valid. A support order made under the *Divorce Act* is valid and enforceable across Canada, as well as in reciprocating states under *The Reciprocal Enforcement of Maintenance Orders Act*.

Similarly, a Manitoba court can make a valid and enforceable order varying a child support order *(variation order)* although one of the spouses does not live in Manitoba, as long as the other spouse is served with the application. In addition, the *Divorce Act* does have a variation procedure similar to that under *The Reciprocal Enforcement of Maintenance Orders Act* whereby part of the hearing may be held in one province and the rest in another.

CHILD SUPPORT AGREEMENTS

Separated parents can make a private agreement out of court about child support. They may do this as part of a formal written separation agreement. However, if they want a court support order or a divorce, the amount of support must be reasonable. See the earlier sections on Manitoba *Child Support Guidelines* and Consent Orders. The courts do not see agreements on child support to be binding like other contracts. For example, the court will not consider that a primary caregiver is bound by an agreement for

child support that is significantly less than the children would get under the guidelines and there are no other benefits to the children in the agreement that would make it fair.

Agreements usually include information on the parents' incomes at the time the agreement is made. They specify how long the support is to be paid, for example, until the child is 18 or completes his or her first university degree. Most agreements also state that the parents can amend the agreement if an important change occurs and that, if they cannot agree on the change, either can apply to the court for an order.

Agreements often contain much more detail about support arrangements than the usual court order. However, although the Maintenance Enforcement Program can enforce support agreements, as well as support orders, the Program cannot do so if the provisions of the agreement are ambiguous or otherwise unsuitable for enforcement (see Chapter 11 on enforcement).

TAXATION OF CHILD SUPPORT

Child support, unlike spousal support, is not taxable income for the recipient and it is not deductible for the paying spouse, unless the parents' order or agreement was made before May 1, 1997 and has not been changed after April 30, 1997. Before May 1, 1997, support paid under child support orders and agreements was included in the recipient's income, and was tax-deductible to the payor, provided certain conditions were met. Child support paid under child support orders and agreements made before May 1, 1997 continue to be included in income and deductible unless:

- the order or agreement provided for the new tax rules to apply; or
- the parents file a joint election with Revenue Canada.

To make a joint election, the parents together fill out and sign a Canada Customs and Revenue Agency Form T1157, Election for Child Support Payments, and send it to Canada Customs and Revenue Agency. For more information on this form, contact Canada Customs and Revenue Agency at 1-800-959-8281 or on the Internet at www.ccra-adrc.gc.ca.

To find out more about the tax rules, contact:

Rulings Directorate
Canada Customs and Revenue Agency
320 Queen Street
16th Tower A Place de Ville
Ottawa ON K1A 0L5

General Inquiries Line: 1-613-957-8953
Fax: 1-613-957-2088

CHAPTER 8

SUPPORT FOR SPOUSES AND COMMON-LAW PARTNERS

The court considers a number of factors when deciding whether one spouse or common-law partner should pay support to the other. These include: the needs and financial circumstances of both spouses, the length of the marriage or relationship, the roles each played during their marriage or relationship and the effect of these roles on their current financial positions, and promoting the financial self-sufficiency of both parties, as far as is practical. The court does not consider marital misconduct, such as adultery, when making a support order.

COMMON-LAW PARTNERS

Unmarried partners of both same-sex and opposite-sex common-law couples may seek an order for their own support under *The Family Maintenance Act* if:

- they have lived together for at least a year and they have had a child together; or
- they lived together continuously for at least three years.

If the common-law partners have already agreed in writing to an amount of support or not to claim support from each other, they cannot apply to the court for support.

If a common-law partner is entitled to claim support, the court will make its decision by considering the same factors it would look at if the persons were married.

EFFECT OF AN AGREEMENT

Where spouses or common-law partners have made an agreement respecting spousal/partner support, the court is unlikely to make a different order. *The Family Maintenance Act* doesn't allow the court to make a spousal/partner support order different from a provision in a separation agreement, unless:

- the payor has not made the payments;
- the maintenance payments agreed to were not adequate considering the parties' circumstances when the agreement was made; or
- the dependent spouse/partner is now receiving, or needs, government assistance.

The federal *Divorce Act* does not contain similar provisions preventing the court from making a spousal support order different from an agreement, but it does direct the court to consider an agreement. The court usually rules that the spouses must follow the agreement.

WHERE ONE SPOUSE LIVES OUTSIDE MANITOBA

⚖ *The Family Maintenance Act*

A married spouse or common-law partner, living in Manitoba can apply for support in the Manitoba courts under *The Family Maintenance Act* where the other party lives outside Manitoba. If the other party is served with notice and agrees to have the Manitoba court deal with the matter, the Manitoba court can hold a hearing and may make a support order that is valid and enforceable outside of Manitoba. If the other party does not agree to the Manitoba court hearing the matter, the order will not be enforceable outside Manitoba.

⚖ *The Reciprocal Enforcement of Maintenance Orders Act*

The Reciprocal Enforcement of Maintenance Orders Act of Manitoba provides a procedure for a person living in Manitoba to obtain a spousal or common-law partner support order when the other spouse/partner lives in a reciprocating state outside Manitoba and has not agreed to the Manitoba court dealing with the matter under *The Family Maintenance Act*. Similarly, the Act allows a person living in a reciprocating state to apply there for a support order against a spouse/partner living in Manitoba.

A reciprocating state is a province, state or country that has entered into an agreement with Manitoba to assist Manitobans in obtaining and enforcing support orders against a resident in that province, state or country. All Canadian provinces/territories and most American states are reciprocating states, along with many other foreign counties.

An application for a support order under *The Reciprocal Enforcement of Maintenance Orders Act* involves two stages:

- A hearing is held in a Manitoba court, in the absence of the person living outside Manitoba and without notice to him or her, to obtain a *provisional order* of support. The applicant must prove that he or she is entitled to support under *The Family Maintenance Act*.

  The order made at this hearing has no effect, and no support is payable, until the other party has an opportunity to attend a hearing before a court in the reciprocating jurisdiction in which he or she lives. The evidence considered by the court in Manitoba will be sent to the court in that jurisdiction.

- A hearing is then held by the court in the reciprocating jurisdiction to confirm the provisional order. At this hearing, the other party will have an opportunity to present his or her evidence. The applicant spouse/partner living in Manitoba is not required to attend this hearing or hire a lawyer for the hearing. However, in some cases, it may be helpful to do so.

  The court will determine whether the provisional order of maintenance made in Manitoba should be confirmed. The court may confirm the order in the same amount ordered by the Manitoba court or with a different amount. The *confirmation order* made by this court is a *final order* of maintenance and is enforceable in the other province, state or country.

A person living outside Manitoba in a reciprocating jurisdiction can apply for support from their spouse/partner resident in Manitoba through the same type of two-stage hearing process.

If their circumstances change, either party may apply to have a support order made in this way varied through a similar two-stage procedure. If the laws of the reciprocating state do not allow an order to be varied in this way, the application may have to be made in the other state.

A new law will replace *The Reciprocal Enforcement of Maintenance Orders Act* and simplify the existing system. Under the new law, Manitoba spouses or common-law partners who want to apply for or vary support obligations will fill out a support application form that will be sent to the jurisdiction where the other party lives. The other party will be notified of the application and the court there will make the appropriate support order.

Support orders made in other Canadian jurisdictions, and some foreign countries, can be registered in the Manitoba court and enforced by the Maintenance Enforcement Program. Under the new law, Manitoba spouses or common-law partners who feel that a support order made in another Canadian province or territory should not have been made will need to apply to that other court if they wish to challenge it. Manitoba spouses or common-law partners who feel that a support order made outside Canada should not have been made will be able to ask the Manitoba court to treat the order as a support application and request a court hearing in Manitoba to set the appropriate amount of support.

The new law is called *The Inter-jurisdictional Support Orders Act*. As of February 1, 2002, the new law is not yet in effect. Contact your lawyer or the Family Law Branch for further information on whether this law is in effect.

⚖ The *Divorce Act*

Spouses can apply for spousal support under the *Divorce Act* in a Manitoba court as long as one of the spouses lives in Manitoba. The other spouse must be served with the petition but does not have to agree to the Manitoba court hearing the matter for the Manitoba court to be able to make a valid order. A support order made under the *Divorce Act* is valid and enforceable across Canada, as well as in reciprocating states under *The Reciprocal Enforcement of Maintenance Orders Act*.

Similarly, a Manitoba court can make valid and enforceable orders varying a spousal support order (variation order) although one of the spouses does not live in Manitoba. In addition, the *Divorce Act* does have a variation procedure similar to that under *The Reciprocal Enforcement of Maintenance Orders Act* whereby part of the hearing may be held in one province and the rest in another.

TAXATION OF SPOUSAL SUPPORT

Spousal or partner support paid under a written agreement or court order is generally tax deductible to the payor and included in the income of the recipient. However, all child support due in a year must be paid before any deduction is allowed for spousal or partner support. When deciding on the amount of a spousal or partner support order, the court takes into account the tax benefit to the payor and the fact that the recipient will have to pay income tax on the support received.

CHANGING A SPOUSAL SUPPORT ORDER

A party can apply to the court to change or end a spousal/partner support order if an important change has occurred. Whether the court will change the order depends on a number of factors.

CHAPTER 9

PROPERTY

In Manitoba, *The Marital Property Act* sets out the rules for dividing the value of *marital property* between spouses. In general, marital property is any property that either or both spouses have acquired while married and living together. The basic rule is that both spouses *have a right to an equal share* in the value of marital property when they separate, no matter which spouse owns the property or where it is located.

The law recognizes that, whether a spouse is responsible for running the household or for earning the family income, the contribution to the marriage is of equal importance and should be given equal weight in dividing marital property between the spouses.

The Marital Property Act applies to all married persons (spouses) living in Manitoba, no matter where they were married or how long they have been married. It does not apply to spouses who were living separate and apart before May 6, 1977 and have not lived together for more than 90 days since then. If one or both spouses no longer live in Manitoba, the Act will apply only if Manitoba was the last place they lived together.

It does *not* apply to persons who are living together but are not legally married (common-law partners). See Chapter 16, Unmarried Relationships.

PROPERTY COVERED BY THE MARITAL PROPERTY ACT

Under the Act, the value of all assets owned by either or both spouses, including real estate, money, investments, vehicles and jewellery, must be shared by the spouses. There are some exceptions:

- Property a spouse acquired before the marriage will not be included unless it was acquired in contemplation of the marriage. However, any increase or decrease in the value of such property during the marriage must be shared.

- Property dealt with in a written agreement between the spouses will not be shared unless a court has set the agreement aside. Spouses who do not want *The Marital Property Act* to apply to their property must clearly say so in writing. This agreement may be made before or during the marriage, or upon marriage breakdown, and must be very carefully drawn up. (See Chapter 4, Separation and Divorce on separation agreements.) Each spouse should see his or her own lawyer before signing such an agreement.

- Compensation received by one spouse for a personal injury or disability will not be shared unless it was to compensate for a loss suffered by both spouses.

- A gift or inheritance received by one spouse from a third person will not be shared unless the giver intended to benefit both spouses. However, if the gift or inheritance is of extraordinary value, this value may be taken into account in determining how commercial assets will be shared.

- Property equally owned by both spouses *(jointly owned property)* is not shared under *The Marital Property Act*, as each spouse already owns one-half of this property in law. Often the marital home is jointly owned by the spouses, so both must agree in writing to any sale, mortgage or other transaction involving it. If spouses cannot agree to the sale of a jointly owned home, an application to have the property sold and the proceeds divided can be made to court under *The Law of Property Act*.

- Property acquired by one spouse after the spouses have separated will not be shared between them.

ACCOUNTING AND EQUALIZATION OF MARITAL PROPERTY

Each spouse is entitled to an *accounting* and *equalization* of marital property and may apply to court to enforce this right, if necessary.

Where a court has granted a divorce and the issue of marital property has not been dealt with, either ex-spouse may apply to court for an accounting and equalization of assets. This application must be made within 60 days after the divorce takes effect.

An *accounting* involves the preparation of a complete list of assets and debts by each spouse. The list must show the value of each asset and the amount of each debt as of the date of separation. If a spouse will not provide such a list voluntarily, the court may order that this be done.

The court will determine the total value of the assets each spouse must account for. It will then determine how much the spouse with more should pay to the other *(an equalization payment)* so that each may have an equal share of the assets. The court does not divide the assets themselves. However, it can order that ownership of an asset be transferred from one spouse to the other in order to satisfy an equalization payment.

In some cases, the court may decide that the assets should be shared unequally. This depends partly on whether the asset is a *family asset* or a *commercial asset*. The court may divide family assets unequally only if it is satisfied an equal division would be grossly unfair because of extraordinary circumstances. Judges have slightly more discretion to divide commercial assets unequally, but must be satisfied that it would be clearly unfair to share them equally.

Under *The Marital Property Act*, property that is used for family purposes, such as shelter, transportation or recreation, is a family asset.

Some examples are:

- the marital home;
- household furniture;
- the family car;
- a summer cottage;
- money in savings, chequing or current accounts (where this money is used for family purposes);
- rights under life or accident and sickness policies or annuity policies; and
- registered retirement savings plans (RRSPs).

Marital property that is not a family asset is a commercial asset. Some examples are:

- an interest in a business such as a drugstore, construction company, medical practice or law practice; and
- a life insurance policy or accident and sickness insurance policy taken out solely to provide compensation for loss to a business undertaking due to death or illness of the insured person.

The special nature of a farm may make it both a family and a commercial asset.

The farmhouse, and that part of the farmland necessary for the enjoyment of the farmhouse, are the marital home and therefore a family asset. The rest of the farm property may be a commercial asset.

When deciding whether the assets should be shared unequally, a judge cannot consider the conduct or actions of the spouses unless that conduct amounts to *dissipation*. Dissipation is conduct that seriously threatens the financial security of the family. For example, if one spouse has given an excessive gift to another person, the court will take the value of this gift into account to reduce that spouse's share in the marital property. However, this can be done only if the other spouse has applied for a division of marital property within two years of discovering that this gift was made.

An unequal division of family or commercial assets is very rare.

ORDERS FOR THE PRESERVATION OF PROPERTY

A spouse who has applied to court for a division of marital property may also ask for an order to preserve property. This order prevents the other spouse from destroying, irresponsibly selling or giving away, or removing property from Manitoba before the court has dealt with the marital property.

THE MARITAL HOME

One of the most important family assets is the marital home. This is any property used as a family residence. It may be a house, apartment, trailer or condominium.

The Homesteads Act of Manitoba gives special protection to the family home. Where the home is owned by one spouse only, the other spouse must consent in writing before it can be sold or mortgaged. If the spouses have been living separate and apart for at least six months, or a court has declared the non-owning spouse to be mentally disordered, the court may allow the transaction to take place without the consent of that spouse. In such a case, the court may also attach conditions to the transaction to protect the non-owning spouse.

THE FAMILY FARM

The special protection consent given the family home under *The Homesteads Act* also applies to the family farm. This legislation applies to not only the farm dwelling, but also up to 320 acres of land.

SHARING OF PENSION BENEFITS BETWEEN SPOUSES

Canada Pension Plan

The federal *Canada Pension Plan* applies to most kinds of employment in Canada. Usually, pension benefits under the plan are paid on retirement if a person has been a member of the workforce. The amount received will depend on the length of time the person has worked and the amount he or she has contributed to the plan.

However, pension *credits* earned under the plan by either spouse during their marriage may be divided equally between them upon divorce or separation. In this way, a spouse who has worked in the home throughout the marriage, and therefore could not contribute to the plan, will receive some pension benefits upon retirement of the other spouse.

Spouses who separated or divorced on or after January 1, 1987, and lived together for at least 12 consecutive months during the marriage can obtain a share of the other spouse's credits.

A separated spouse cannot apply for a division until they have been separated for at least 12 consecutive months. If one of the spouses dies, the application must be made within 3 years of the death. Divorced spouses can ask for a division at any time after the divorce.

The provisions of a spousal agreement signed before June 4, 1986, may prevent a division of Canada Pension Plan credits. In Manitoba nobody is bound by a written agreement signed after that date that says credits will not be divided. He or she can still obtain a division of the credits.

For further information on the division of Canada Pension Plan credits, contact Human Resources Development Canada in one of the following ways:

- In person
  Winnipeg: 391 York Avenue
  1122 Henderson Highway
  1031 Autumnwood Drive
  2527 Portage Avenue
  Brandon: 1039 Princess Avenue
- By telephone
  1-800-277-9914 toll-free (English)
  1-800-277-9915 toll-free (French)
  1-800-255-4786 toll-free (TTY)
- By mail
  Human Resources Development Canada
  Income Security Programs
  P.O. Box 818 Stn. Main
  Winnipeg MB R3C 2N4
- Through the Internet
  www.hrdc-drhc.gc.ca/isp

The Pension Benefits Act

The Pension Benefits Act applies to pension plans sponsored by an employer for employees in Manitoba. It does not apply to the Canada Pension Plan, to federally regulated pension plans (for example, plans for employees of banks and airlines), to federal government employees or to personal pension plans (such as RRSPs).

If spouses were separated or divorced on or after January 1, 1984, *pension benefit credits* earned during the marriage by either spouse may be divided equally between the spouses, unless they agree not to divide the pension.

However, an agreement not to divide the pension is valid only if it is written in a prescribed form. In addition, before signing, each spouse must obtain independent legal advice and receive a statement from the pension plan administrator specifying the pension benefits to which they would have been entitled under the Act.

The portion of pension benefit credits to which a spouse becomes entitled under this Act is transferred directly to that spouse, but not in funds. Instead, he or she must transfer the credits directly to his or her own pension or retirement benefit plan, or to a locked-in RRSP. If the credits are transferred to a locked-in RRSP, the spouse may purchase a life annuity at any age.

For more information about obtaining a division of pension benefits under *The Pension Benefits Act*, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
945-2740
Fax: 948-2375
Toll-free: 1-800-282-8069 (Ext. 2740)

The Marital Property Act

Occupational pensions not covered by *The Pension Benefits Act* can be shared under *The Marital Property Act*, which deems pensions to be family assets. For more details about the division of marital assets, see pages 47 to 49. Often the court will direct that this kind of pension be shared by ordering the pension plan member to pay his or her spouse a share of the pension if and when the member receives it. Federally regulated pensions are shared under *The Marital Property Act*. For more information about federally regulated pensions, call 1-800-385-8647 (Internet: www.osfi-bsif.gc.ca).

UNMARRIED OR COMMON-LAW RELATIONSHIPS

General

Neither *The Marital Property Act* nor *The Homesteads Act* applies to unmarried relationships, so unmarried partners have no right to the remedies and protection respecting property under that legislation. An unmarried partner has no right to any property solely owned by the other partner unless the partner can prove to the court that he or she contributed to acquiring, improving or maintaining the property and should be compensated for that contribution. Unmarried partners, like legal spouses, have equal rights to property that they jointly own.

Pensions

Both the Canada Pension Plan and *The Pension Benefits Act* of Manitoba provide for sharing of pension benefits between either same-sex or opposite-sex common-law partners in certain circumstances. There is no legislation similar to *The Marital Property Act* that would require a common-law partner with an occupational pension in a federally regulated industry, such as banks and airlines, to share his or her pension. However, these pension assets can be divided between former common-law partners by a court order or a written agreement.

Canada Pension Plan

An unmarried partner may be entitled to a division of Canada Pension Plan credits accumulated by the other partner during the period that the couple lived together. They must have separated on or after January 1, 1987 and they must have lived together in a conjugal relationship for at least 12 consecutive months.

A separated partner cannot apply for a division until they have been separated at least 12 consecutive months and he or she must apply within four years from the date of separation. The provisions of an agreement between common-law partners signed before June 4, 1986 may prevent a division of Canada Pension Plan credits. In Manitoba, a person is not bound by any written agreement not to divide those credits after that date. He or she can still obtain a division of credits.

To obtain further information from Human Resources Development Canada on the division of Canada Pension Plan credits, see page 50.

The Pension Benefits Act

If an unmarried partner has a pension governed by *The Pension Benefits Act*, his or her common-law partner may be entitled to share the pension credits in some circumstances. However, the pension will not be divided unless the pension-owning partner has opted into the sharing provision. This is done by filing with the pension plan administrator a declaration in a prescribed form, stating that the credit-splitting provisions of the legislation apply to the relationship. Nothing in the law requires a common-law partner having a pension to make this declaration.

For further information about obtaining a division of pension benefits under *The Pension Benefits Act*, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
945-2740
Fax: 948-2375
Toll-free: 1-800-282-8069 (Ext. 2740)

CHAPTER 10

FAMILY VIOLENCE

SPOUSAL OR PARTNER ABUSE

Spousal or partner abuse is usually violence or threats of violence, and includes physical, sexual, emotional or psychological abuse. These wrongful acts are committed against a person by their spouse, common-law partner, boyfriend, girlfriend or other intimate partner, past or present. In an abusive relationship the abused person usually fears the abuser (or at least the abuser's behaviour) and often changes his or her own behaviour, giving up the right to be a full and equal partner in the relationship, in order to keep the peace.

Under the law, no one has the right to abuse another. This abuse may be physical, sexual, emotional or psychological. There is help available for victims of abuse. For more information, call the **toll-free provincial crisis line 1-877-977-0007.** Chapter 17 also contains a list of shelters and community resources for victims of domestic violence.

There is a cycle of violence in most abusive relationships. It has three distinct phases: a tension-building phase, an explosive incident or phase and a honeymoon phase. Unless the cycle is broken, the abuse will happen more and more frequently and becomes more and more severe.

Children who witness abuse in their families—even if they themselves are not the targets—can suffer a great deal. They often grow up believing that abuse is part of a normal relationship and many become abusers or abuse victims themselves.

If a spouse, a partner or a child is being abused, both criminal law and civil law offer assistance and protection. Each branch of the law provides different remedies. It may be necessary to use both systems for the best available protection.

Criminal law is intended to stop crimes or offences from being committed and punish offenders. Usually, the police lay charges and a Crown Attorney will prosecute the case in court.

Under criminal law, once someone is arrested and charged with abusing his or her spouse or partner, the court can impose conditions on the alleged abuser, until the charge is dealt with in court. The conditions may include no contact or communication with the victim or forbidding the alleged abuser from using alcohol, for example.

Civil law is used to settle disputes between individuals and can also provide protection for an individual. Those who want the assistance and protection of civil law must apply to court and hire their own lawyer if they wish to be represented.

⚖ Civil Law Protection

Spouses or partners who are being abused, or who fear they may be abused, may apply to court for an order of protection, sometimes called a "restraining order." These orders may forbid the abusing spouse from engaging in certain behaviour, such as making harassing telephone calls.

Until September 30, 1999, *The Family Maintenance Act* provided for these orders. A new law, called *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* has replaced the protective relief provisions of *The Family Maintenance Act*. It provides victims of domestic violence and stalking with greater protections and options under the law.

The new law creates two different types of orders: *protection orders* and *prevention orders*.

A **protection order** can be obtained quickly, simply and inexpensively, without notice to the alleged abuser or stalker (the *respondent*). Applications can be made in person. Applications can also be made by telephone with the assistance of a police officer or a lawyer. Anyone applying will have to provide evidence under oath about the stalking or domestic violence. Protection orders may include any of the following provisions necessary for immediate protection:

- prohibit the respondent from coming to the applicant's home or workplace or that of other specified persons;
- prohibit the respondent from following the applicant or others;
- prohibit the respondent from contacting or communicating with the applicant or others, directly or indirectly;
- give the applicant or respondent possession of necessary personal effects;
- provide peace officer assistance to remove the respondent from premises and/or to ensure the orderly removal of personal effects;
- require the respondent to turn over weapons and authorize the police to search for and seize weapons.

After a protection order is made, the respondent will be notified. The respondent will then have 20 days to ask the Court of Queen's Bench to set it aside and will have the opportunity to present evidence.

Prevention orders, made by judges of the Court of Queen's Bench, may include any of the measures outlined above. The court can order additional measures to protect the applicant and deal with the domestic violence or stalking, including:

- allowing the applicant sole occupation of the family residence;
- giving temporary possession of specified personal property, such as household goods, furniture or vehicles;
- seizing items used by the respondent to further the domestic violence or stalking such as cameras, video cameras, computers and other recording equipment;
- recommending the respondent obtain counselling;
- prohibiting the respondent from damaging or dealing with property in which the victim has an interest;
- ordering the respondent to pay compensation to the applicant for any monetary losses caused by the violence or stalking, such as expenses for counselling, security measures, moving or lost income.

If the respondent uses a vehicle to further the stalking or domestic violence, a Court of Queen's Bench judge may suspend the respondent's driver's licence and prohibit the respondent from operating a motor vehicle.

If immediate protection is needed, an abused spouse or partner can apply for a temporary *(interim)* order, sometimes without notice to the abusing spouse. Such a without-notice order will remain in effect for a limited time, until a judge can hear from both parties. For further information on family court proceedings, see Chapter 2, The Court System and Procedures and Alternate Dispute Resolution.

The law also creates a new *tort* of stalking. This means stalking victims are now able to sue stalkers for damages they suffer. Previously, this could be done only if the stalking behaviour fit within an existing tort such as assault or battery.

This new law, *The Domestic Violence and Stalking Prevention, Protection and Compensation Act*, came into effect on September 30, 1999.

Formerly, under *The Family Maintenance Act* a judge or magistrate could make an order forbidding the abuser to molest, annoy or harass the other spouse or partner *(a non-molestation order)*. A Court of Queen's Bench judge could make an order forbidding the abuser to enter the home or place of work of the other *(a prohibition order)*. These orders remain unchanged by the new law. They continue to be in effect until the court cancels the order or, in the case of a non-molestation order that had been granted by a magistrate or a Provincial Court judge, the person protected under that order gets a protection order or prevention order under the new law. In such a case, the new protection order or prevention order would take the place of the old non-molestation order

A person disobeying a civil order of protection can be brought before a judge and may be fined or imprisoned.

Civil orders of protection do not lapse after a certain period of time unless they specifically say so. Such orders are in effect until changed or ended by a court order, even if the parties reconcile.

Criminal Law Protection

Anyone, including a spouse or partner, who is attacked or threatened with violence should contact the police at once. Call 911 or, if 911 service is not yet available in your community, call your local RCMP detachment or police department or check the front of your community telephone directory for your local emergency phone number(s).

Spousal or partner abuse is a serious crime. Manitoba Justice has directed all police officers to lay criminal charges in every case where someone assaults his or her spouse or partner. This includes sexual assault. Charges must be laid where there are reasonable and probable grounds to believe the assault has taken place, even if there are no witnesses to the abuse other than the victim. The police, not the victim, are responsible for laying charges after the offence has been reported.

The police can help the victim leave the home and get medical attention, if necessary. If an abuse victim and his or her children need a place to stay, a shelter may be available in their community. See Chapter 17 for a list of shelters and community resources for victims of family violence.

Once an abusing spouse or partner has been charged, the case will proceed in criminal court. If the alleged abuser pleads not guilty, the victim will ordinarily be required to be a witness for the Crown. In criminal prosecutions by the Crown, only the Crown can stop the proceedings once charges have been laid.

In Winnipeg, a specialized family violence court handles spousal or partner abuse prosecutions, physical and sexual abuse of children and elder abuse. This court is designed to deal sensitively with abuse prosecutions. The judges and Crown Attorneys who appear in this court are particularly aware of the community resources available for both victim and offender.

In many parts of the province, the Victim/Witness Assistance Program and/or Women's Advocacy Program can assist the victim through the case. They can be reached at:

Women's Advocacy Program
Winnipeg: 945-6851
Brandon: 726-6515
The Pas: 627-8483
Thompson: 677-6368
Selkirk: 785-5213

Victim/Witness Assistance Program
Winnipeg: 945-3594
Toll-free: 1-800-282-8069 (Ext. 3594)

A new law, the *Victims' Bill of Rights*, will soon give crime victims in Manitoba a stronger voice in decisions affecting their case. When this law comes into effect, victims will be able to exercise certain rights at each stage of the legal process. These include the right to be consulted about bail, release conditions and discussions between a Crown Attorney and the accused offender about how a charge is disposed of in court.

To find out when the *Victims' Bill of Rights* becomes law in Manitoba, visit the Manitoba Justice Web site at www.gov.mb.ca/justice or check with your lawyer, the Women's Advocacy Program, the Victim/Witness Assistance Program or other victim services agency.

If an abuser is convicted, the judge will determine the sentence, looking at issues such as the seriousness of the crime and the abuser's previous criminal record. For example, the judge may order the abuser to attend counselling, may require him or her to keep away from the victim or may imprison the abuser.

As well as the protective orders described in the section on civil law, those who fear further contact with their abusive spouses or partners may apply for a *peace bond*. This order forbids one person to harass others and is similar to a civil order of protection except that it is handled in criminal court. It is also available to people other than spouses and common-law partners.

An application for a peace bond can be made at the nearest Provincial Court office. A peace bond is issued if the other person consents to a bond or a judge orders it after a hearing. The peace bond may include conditions such as no personal or telephone contact. A bond remains in effect for up to one year and a party who does not abide by its terms can face criminal charges.

CHILD ABUSE AND NEGLECT

Civil law in Manitoba allows the state to intervene to protect children. *The Child and Family Services Act* requires child and family services agencies and the police to take action to protect children. A child in need of protection is one whose life, health or emotional well-being is endangered by the actions or omissions of a person.

Anyone with reason to believe a child is in need of protection must report the situation to the child's parent or guardian or to a child and family services agency. If a child is in need of protection because of the actions of their parent or guardian, or if the parent or guardian is unknown, then the report must be made to an agency. See Chapter 12 for further discussion on protection of children. Child and family services agency offices are listed in Chapter 17.

Children are also protected under criminal law. The *Criminal Code of Canada* has a number of provisions to protect children and punish offenders. These include criminal negligence, assault and sexual assault and sexual offences against children.

In situations involving suspected physical or sexual abuse, child and family services agencies and the police must share information and work together. The Child Victim Support Service of Manitoba Justice addresses the special needs of children who must give evidence in court.

Child Victim Support Service
Winnipeg: 945-0662
Brandon: 726-6515
The Pas: 627-8483
Thompson: 677-6368
Selkirk: 785-5213

In Winnipeg, criminal court cases involving child abuse can be held in a special "child-friendly" courtroom, designed to make children feel as comfortable as possible. The witness box accommodates the presence of a support person during testimony. In addition to brightly coloured walls, the courtroom is equipped with closed-circuit television and other useful aids in obtaining testimony from young, vulnerable witnesses. Adjacent to the courtroom is a child's waiting room with an attached bathroom, games, toys, a television with closed captioning capacity and a TTY deaf-access telephone line.

If one parent believes their spouse or ex-spouse, partner or ex-partner is threatening a child's safety, the police or an agency should be contacted immediately. The concerned parent should contact a lawyer for help in obtaining a civil order of protection, a peace bond or other protective measures. If the alleged abuser has custody of the child or court ordered visits with the child *(access)*, the court may consider changing custody, or changing or eliminating access if the judge believes it is in the best interests of the child.

CHAPTER 11

ENFORCEMENT OF SUPPORT, CUSTODY AND ACCESS

ENFORCEMENT OF SUPPORT

⚖ The Maintenance Enforcement Program

In Manitoba, support payments in court orders and some written agreements can be enforced free of charge through the Maintenance Enforcement Program. The Program receives and monitors payments, and takes steps to enforce missing payments *(arrears)*. The Program can have its lawyers take maintenance enforcement action in court at no cost to the person owed support.

▪ Types of Support Provisions Enforced by the Program

All Manitoba orders for support payments, except orders made in divorce proceedings, are automatically filed with the Maintenance Enforcement Program and dealt with by an enforcement officer *(designated officer)*.

If a judge orders it, support orders made in Manitoba divorce proceedings can be enforced through the Program. If the divorce order does not state payments are to be made through the Maintenance Enforcement Program, and the person owed support later wants payments made that way, they can ask the court to add this to the order. The order can be changed this way without notice to the person who is responsible for paying support. If someone wishes to change their divorce order in this way and does not have a lawyer, the Program can advise how this can be done and where samples of the documents needed by the court can be obtained.

Persons entitled to support under orders enforced by the Program, who do not want the Program involved any more, must complete and sign an opt-out form and give it to the designated officer. Anyone receiving social assistance cannot opt out.

A person who has opted out of the Maintenance Enforcement Program may re-enroll by filing a completed and signed form and a sworn statement of the amount of support owing under the order or agreement (arrears of support). Opt-out and re-enrollment forms are available at Maintenance Enforcement Program offices.

Support orders and some agreements from other parts of Canada can be registered in Manitoba under *The Reciprocal Enforcement of Maintenance Orders Act*. Once this occurs, the Program enforces payments in the same way as if they had been ordered by a Manitoba court. Similarly, support orders and some agreements from a number of foreign countries can also be registered and enforced in Manitoba, as long as the country is one with which Manitoba has made maintenance enforcement arrangements (a

reciprocating state). To find out whether support orders from a particular country can be enforced in Manitoba, contact:

Family Law Branch
Manitoba Justice
705 - 405 Broadway
Winnipeg MB R3C 3L6
945-0268
Fax: 948-2004
Toll-free: 1-800-282-8069 (Ext. 0268)

Written support agreements made in Manitoba can be enforced through the Maintenance Enforcement Program in the same way as court orders, as long as the parties agree in writing that payments will be made through the Program. The support agreement must also be suitable for enforcement through the Program. For example, the agreement must be worded clearly enough so the Program can tell precisely how much support is owed.

▪ Monitoring Support Payments

Anyone paying support through the Maintenance Enforcement Program can do so by cheque or money order payable to the person or agency entitled to the payments, or by cash or debit card. Payments must be made through the Program. A record of the date and amount of the payment will be entered in the Program's computer. It is extremely important for both parties to have all payments made through the Program, so an accurate record of payments can be kept. The computer is programmed to automatically flag missing payments *(default)* so enforcement action can be taken.

▪ Types of Enforcement Action

The designated officers of the Maintenance Enforcement Program have the power to demand information about the address and financial circumstances of persons required to pay support (support payors). This helps the Program take effective action if the support payor does not make the required payments (defaults).

There are many steps the Program can take to enforce support payments when default occurs, including:

- seizing (garnishing) some of the payor's wages directly from their employer;
- garnishing the money in the payor's bank accounts (including joint accounts);
- seizing RRSPs or bonds;
- garnishing payments the payor would usually receive under a pension plan, superannuation plan, life or fixed-term annuity policy or an accident, sickness or disability insurance policy;
- garnishing the monies to the payor's credit in his or her pension plan (pension benefit credits);
- garnishing monies owed or seizing and selling property from a company that is controlled by a payor;
- seizing and selling assets or property (e.g. cars, jewellery, land);
- garnishing employment insurance benefits, income tax refunds, old age security payments and certain other funds paid by the federal government;
- asking the Motor Vehicles branch to suspend the payor's driver's licence and registration privileges;
- requiring the payor to appear before a court officer (a *deputy registrar*) to provide information about their financial and employment situation; and

- requiring the payor to appear before a judge or master of the court for a maintenance enforcement hearing *(show cause hearing)*.

The designated officer decides what enforcement action is most appropriate for each case.

A defaulting support payor appearing for a show cause hearing must satisfy the court that he or she did not wilfully fail to make support payments. For example, there were extreme circumstances that made it impossible for the person to make payments. The person entitled to payments (support recipient) does not have to attend the hearing. Representatives from Manitoba Justice will appear on behalf of the Program at the show cause hearing to enforce the order.

At the end of the show cause hearing, the court may order payment of the arrears in full or through regular instalments (e.g. monthly payments). These default payments are in addition to the regular support payments already required under the order or agreement. The court may also fine the defaulting support payor up to $3,000 and/or order a jail term of up to 90 days.

It is important to note that payment of a fine or time in jail does not mean the defaulting support payor no longer has to pay the support arrears - all outstanding support payments continue to be owing to the support recipient.

A payor who wants to have arrears of support cancelled or payments reduced must ask a judge to cancel arrears and/or reduce payments (a *variation application*). This kind of court application is not heard in maintenance enforcement court. The payor must give the support recipient notice of a variation application. (See Chapter 7 and Chapter 8 on varying court orders.)

For further information about the Maintenance Enforcement Program, in Winnipeg contact:

Maintenance Enforcement Program
225 - 405 Broadway
Winnipeg MB R3C 3L6
945-7133
Fax: 945-5449
Toll-free: 1-800-282-8069 (Ext. 7133)

Outside Winnipeg, interested persons should call the nearest office of the Court of Queen's Bench or, where there is no such office, the Provincial Court. A complete list of court offices in Manitoba is shown in Chapter 17.

Enforcement of Orders Outside the Maintenance Enforcement Program

No one is required to have their support payments enforced through the Maintenance Enforcement Program (unless they are receiving social assistance). If a support recipient does not want to be enrolled in the Program, they should consult a lawyer to see what steps they can take to enforce the order if payments are not made as required. While there are many enforcement options available to private individuals, they are more limited than those available through the Program.

Enforcing Support Provisions Against Persons Living Outside Manitoba

If a support payor lives outside of Manitoba, the order or agreement can be registered and enforced elsewhere in Canada, and even in another country as long as Manitoba has mutual maintenance enforcement arrangements with that country (i.e. it is a reciprocating state).

For free assistance in sending an order outside of Manitoba to be enforced, in Winnipeg support recipients should contact:

Maintenance Enforcement Program
225 - 405 Broadway
Winnipeg MB R3C 3L6
945-7133
Fax: 945-5449
Toll-free: 1-800-282-8069 (Ext. 7133)

Outside Winnipeg, support recipients should call the nearest office of the Court of Queen's Bench or, where there is no such office, the Provincial Court. A complete list of court offices in Manitoba is shown in Chapter 17.

ENFORCEMENT OF CUSTODY AND ACCESS

If a parent has a problem enforcing custody or access, criminal charges may apply or civil court enforcement options may be available, depending on the circumstances of the case.

The Crime of Parental Child Abduction

If one parent takes or keeps a child under 14 years of age away from the other parent without the other's consent, he or she may be charged with parental child abduction (kidnapping) under the *Criminal Code of Canada*. It doesn't matter if there is a Canadian court order of custody or not. Special consent from the Manitoba Department of Justice must be given before a parental child abduction charge can be laid where there is no Canadian custody order.

There are a number of situations where a charge of abduction may be laid, even if there is no Canadian custody order:

- The parents and child have been living together and suddenly one parent takes the child out of Manitoba without the other's consent, intending to deprive the other of his or her rights as a parent.
- The parents are separated and previously agreed that their child will live with one of them. Unless the parent who has been living with the child consents, the other parent cannot later decide to keep or take the child away, unless they get a court order.
- There is a foreign custody order not being complied with.

Where the court has ordered one parent have custody of a child and the other parent takes away or keeps the child without the custodial parent's consent, that parent may be charged with abduction. A charge may also be laid if one parent with joint custody takes away or keeps the child without the consent of the other joint custodial parent.

A parent charged with abduction may have a defence to the charge if the action was taken to protect the child or the parent from immediate danger, or if the other parent agreed he or she could take or keep the child. It is not a defence to a charge of parental child abduction to say the child wanted to go or stay with the abducting parent.

Parents who feel ongoing custody arrangements no longer meet their child's needs must ask the court to make a custody order or change the existing order if they cannot agree on a new custody arrangement. Where a custody order exists, it is best to have a new, changed order prepared, even if parents agree to a new custody arrangement.

Where an abduction charge is laid, a Canada-wide warrant may be issued for the arrest of the abducting parent. This means the parent can be arrested anywhere in Canada and returned to Manitoba to face the criminal charge. If convicted of the charge of parental child abduction, a parent may be imprisoned for up to 10 years.

Additional Police Assistance

Even if it is not possible or appropriate for a parent to be charged with parental child abduction in a particular case, the police may still be able to assist a parent by locating and speaking to the other parent who has taken or is keeping the child.

If a child has been taken away by one parent without the other custodial parent's consent, the police and a lawyer should be contacted immediately. In Winnipeg, contact:

Youth Division
City of Winnipeg Police Service
Box 1680
Winnipeg MB R3C 2Z7
986-6091
Fax: 986-2979

The Youth Division is located in the Public Safety Building, 151 Princess Street, and is open from 7:00 A.M. until midnight Monday through Friday. Outside of these hours, parental child abduction complaints can be made through the Winnipeg Police Service Communications Centre at 986-6222.

Outside Winnipeg, parents should contact the local municipal police service or RCMP detachment for assistance in abduction cases.

Enforcement by the Civil Courts

In many cases it may not be appropriate or possible for the police to charge a parent with parental child abduction. There are, however, many ways for the civil (non-criminal) court to enforce custody or access orders, even in international abduction cases.

- **The Hague *Convention on the Civil Aspects of International Child Abduction***

  If a parent abducts a child from Canada (or to Canada from another country) an international treaty called The Hague *Convention on the Civil Aspects of International Child Abduction* ("The Hague *Convention*") may be of assistance in having the child returned. The treaty allows custody rights (whether or not there is an order) and, to a lesser extent, it also allows access rights to be enforced internationally when the abducted child is under 16 years of age.

  The Hague *Convention* requires that children wrongfully removed from the country of their residence or wrongfully kept in another country, when the left behind parent has custody, be promptly returned to their home country.

  There are some limited exceptions to the requirements in The Hague *Convention* to return children, such as if a child would be harmed if returned or if the child wishes to remain in the other country and is old enough to have his or her views considered.

  A much less difficult test applies when requests for return of a child are made more than a year after the child's removal—the court in the other country can refuse to return the child if it feels the child is now settled in the new country. For that reason, it is extremely important to request the return of the abducted child at the earliest opportunity.

  Some 50 countries around the world have now signed and agreed to comply with the terms of The Hague *Convention*. For more information about how to request a child's return and to learn if The Hague *Convention* is law in the country where a child has been taken, contact:

  Director, Family Law Branch
  Department of Justice
  705 - 405 Broadway
  Winnipeg MB R3C 3L6
  945-0268
  Fax: 948-2004
  Toll-free: 1-800-282-8069 (Ext. 0268)

▪ Manitoba's *Child Custody Enforcement Act*

The Child Custody Enforcement Act can help a parent enforce a custody or access order where the child is under 18 years of age. If the child is still in Manitoba, or has been brought to Manitoba, a parent entitled to custody or access under an order can ask the court for an enforcement order. The enforcement order may require information as to the location of the child to be provided to the court, or require the police to help the parent get the child back from the abducting parent or help the parent exercise access times set out in the order. The court may refuse to enforce a custody or access order if there is a concern that doing so would cause the child serious harm.

In addition, where a parent takes a child away from the parent given custody in a court order, or denies court ordered access, contempt proceedings may be started to bring the abducting or access denying parent before the court that made the order. Contempt proceedings may be brought any time a person disobeys a court order. The court may impose a fine or jail sentence, or both, or order additional access times if satisfied the order has been disobeyed. If access is being denied or not being exercised, the court may order the parent who is not obeying the order to pay compensation to the other parent.

If a Manitoba child has been taken to another province, civil court proceedings to enforce the custody or access order and have the child returned must be taken in the other province. Usually parents entitled to custody must hire their own lawyer to enforce the custody or access order in that province. In most provinces, the court can refuse to enforce the order if satisfied that doing so would cause the child to suffer serious harm or if satisfied that the child has no real connection with Manitoba because of the length of time he or she has been living elsewhere.

⚖ Other Services when a Child is Abducted

Even if a child is abducted to a country that is not a party to The Hague *Convention*, an application to a foreign court to enforce a Manitoba court order may still result in an order for the return of the child. Parents should obtain legal information and advice as to their options from a lawyer in the country in question.

Foreign Affairs and International Trade Canada can provide parents of abducted children with a range of assistance, including names of lawyers and information as to the legal system in the other country, certification of documents, ascertaining the welfare of the child, obtaining passport/visa information and reporting on the status of court proceedings. For assistance, contact:

> Foreign Affairs and
> International Trade Canada
> 1-613-996-8885
> Toll-free: 1-800-267-6788

International Social Service Canada (ISS Canada) is a non-profit, non-governmental agency that aims to help resolve family difficulties of an international nature, including child abductions. It is part of an international network of social service agencies.

ISS Canada has been of great assistance to many parents in international child abduction situations, working through its associated agencies in other countries to help parents reach agreements for the return of children, or at least arrangements for parents to communicate with their children. The agency's role can be particularly valuable when a child is taken

to a country where the parent remaining in Manitoba may have few legal rights to enforce a custody or access order. For more information, contact:

ISS Canada
Suite 714
151 Slater Street
Ottawa ON K1P 5H3
1-613-236-6161
Fax: 1-613-233-7306
E-Mail: issc@magma.ca

Another organization that can assist parents when a child is abducted is Child Find Manitoba. Child Find operates prevention programs, assists parents in contacting the police, explains the involvement and role of the police, encourages and supports parents of abducted children, and provides services to register abducted children and publicize their plight. For more details, contact:

Child Find Manitoba, Inc.
343-800 Portage Avenue
Winnipeg MB R3G 0N4
945-5735
Fax: 948-2461
Toll-free: 1-800-532-9135
E-Mail: childmb@AOL.com

CHAPTER 12

PROTECTION OF CHILDREN

The Child and Family Services Act provides for services to protect children and help parents care for their children. These services include counselling and education, financial assistance, homemaker and day care services.

Three different "types" of agencies provide child protection services: community or geographically based agencies, regional offices of the provincial department of Family Services, and native or aboriginal agencies. All child and family services agencies and their primary addresses and telephone numbers are listed in Chapter 17.

VOLUNTARY SERVICES

A parent who wishes to temporarily place a child in agency care or permanently surrender guardianship of a child may ask a child and family services agency to enter into a written agreement to do so.

⚖ Voluntary Placement

Parents who are unable to care for their child may enter into a written agreement with a child and family services agency to have their child placed in care for a period of time *(voluntary placement agreement)*. Such agreements can have the agency care for the child for up to 12 months. The parents must give the agency financial information and may have to contribute all or part of the costs of caring for the child.

A voluntary placement agreement can be renewed on a yearly basis until the child reaches age 18, where the child

- has a mental disability as defined in *The Vulnerable Persons Living with a Mental Disability Act*; or
- is suffering from a chronic medical disability requiring treatment that cannot be given if the child remains at home; or
- is 14 years of age or older and beyond the control of the parent or guardian entering into the agreement.

When an agreement is in place because of a temporary illness or misfortune, the agreement and any renewals cannot last for more than 24 months in total.

The parents or the agency may cancel a voluntary placement agreement at any time by signing the required form.

⚖ Voluntary Surrender of Guardianship

A parent may agree to give up care and custody of his or her child permanently by signing a written *voluntary surrender of guardianship* agreement with a child and family services agency.

Once such an agreement is signed, the agency becomes the legal guardian of the child. That means the agency takes the place of the child's parents and makes decisions about the child's care, including placing the child for adoption.

A parent can withdraw from this agreement within 21 days of signing it, but only if written notice is given to the agency. If the parents of a child are married, both must sign the agreement. If they are not married, the mother alone may sign it. In this kind of case, the agency cannot place the child for adoption if the father has applied to court for an order to be declared the father of the child.

A decision to enter into a voluntary surrender of guardianship agreement is very serious and should be made only with professional assistance and careful consideration of all other options. Such help is available from the child and family services agencies listed in Chapter 17. It is also wise to seek legal advice about such an important decision. See Chapter 1, Legal Information and Legal Advice, for information about finding a lawyer.

PROTECTION SERVICES

Child and family services agencies must investigate any information indicating a child is in need of protection and must take any necessary steps to protect the child.

Sometimes, after an investigation, no action is required or an agency may offer voluntary services. At other times, short-term or emergency services may be needed until a parent or guardian can resume caring for the child. Continuing supervision by an agency may be required. This can be arranged informally or the agency can apply to court for an *order of supervision*. This order gives the agency the right to enter the family home to provide guidance and counselling and to ensure the child is receiving proper care.

⚖ Apprehension of Children

When an agency believes it is necessary to remove a child from the family home to protect the child, it can act without the agreement of the parents. This removal of the child *(apprehension)* can be done without a warrant or court order. If, after apprehending the child, the agency decides the child should not be returned to the family home, it must file an application with the court within 4 days for a hearing to be set. At the same time, the agency must advise the court what arrangements it proposes for the parents to visit with the child until the hearing takes place. If the parents disagree with the agency's plan for visits, they may ask the court to decide what arrangements are appropriate. The agency must show the court that any restrictions on visits are reasonable.

When an agency believes a child is abused or in danger of being abused, the agency may ask the court for an order to remove the suspected abuser from the home or an order preventing the suspected abuser from having any contact with the child. Such an order may prevent apprehension of the child or could allow the child to be returned home.

⚖ Protection Hearings

After filing the application for a protection hearing with the court, the agency must give at least two days' notice of the hearing to:

- the parents or the guardians;
- the child, if he or she is twelve years of age or older;
- the person in whose home the child was living at the time of apprehension; and

- the agency serving the appropriate First Nation if the child is or could be registered as a status Indian.

The notice must include the reasons for the apprehension. The notice must also tell parents or guardians that they are obliged to provide the court and the agency with certain information about their financial circumstances. The court can order the parents or guardians to pay support for the child while the child is in temporary agency care. If a parent or guardian fails to provide the financial information, the court may order them to pay the agency up to $5,000, as well as to make support payments.

An initial protection hearing must be held within 7 days of filing the application, or at the next sitting of the court. Protection hearings can take place in the Court of Queen's Bench (Family Division) or in Provincial Court. Usually uncontested applications in the Court of Queen's Bench (Family Division) are heard by a *master* of that court, not a judge.

All contested cases must include at least one *pre-trial conference*. A pre-trial conference is a meeting of the parties, their lawyers and a judge to try to resolve the case or at least narrow the issues for trial, and to ensure the matter is ready for trial.

At the trial, a judge must decide whether a child is in need of protection and, if so, what order should be made to protect the child. The agency, through its lawyer, will ordinarily present evidence supporting the apprehension and the plan for the child.

Parents and guardians have the right to be represented by a lawyer, give evidence themselves and call witnesses to give evidence on their behalf. In fact, the agency may require the parents to give evidence even if they would prefer not to, by serving the parents with notice to that effect. Because these proceedings are very serious, parents or guardians should always seek legal advice.

Children in these cases who are 12 and older may also participate in the proceedings and/or have legal representation. Others who are entitled to be notified may ask the court for the right to participate.

After hearing all the evidence and submissions, a judge who finds that the child is in need of protection, may:

- order that the child be returned home under agency supervision, subject to any conditions and for the period of time the judge considers necessary;
- order that the child be placed with another person or another person have guardianship, subject to any conditions and for the period of time the judge considers necessary;
- make a *temporary order of guardianship*; or
- make a *permanent order of guardianship*.

⚖ Temporary Order of Guardianship

Under this type of order, the agency becomes the child's guardian and will be responsible for the child for a specific period of time. A temporary order of guardianship cannot be longer than 6 months for a child who was under 5 years of age at the date of apprehension and 12 months for any child between 5 and 12 years of age at the date of apprehension. For older children, temporary orders of guardianship cannot exceed 24 months' duration. In addition, there are limits on the total time that younger children can be in agency care under temporary orders of guardianship.

Unless the order states otherwise, the parents are entitled to reasonable visits with the child. If the agency and the parents cannot agree on visits, either may ask the court to determine appropriate visiting arrangements.

While a temporary order of guardianship is in effect, the agency and the family are expected to try to work together to resolve the problems that required the child to be in agency care. If they are able to do so before the order ends, the parents or the agency may ask the court to terminate the order and have the child returned home. However, if after trying to work with the family, the agency does not think the child should be returned home, it may ask the court to extend the temporary order of guardianship for another specific period. In some cases, the agency may ask to be made the permanent guardian of the child.

Permanent Order of Guardianship

Where a judge makes a permanent order of guardianship, the agency becomes the child's permanent guardian, taking the place of the parents. The agency makes all decisions about the child's care and may place the child for adoption. The parents' rights and responsibilities with respect to the child are ended.

It is entirely up to the agency to determine whether the parents will be allowed to visit the child. However, if the child has not been placed for adoption, the parents may apply to the court for an order allowing them visits. The court will decide what visiting arrangements, if any, should be made.

Although the rights and responsibilities of the parents end when a permanent order of guardianship is made, an agency or a parent may ask the court to terminate the permanent order. An application by a parent may be made only if the child has not been placed for adoption and if at least one year has elapsed since the parent's right to appeal the permanent order of guardianship would have ended or, if there was an appeal, at least one year since the appeal was finalized.

Any order made by a judge in a protection hearing may be appealed to the Manitoba Court of Appeal within 21 days of the signing of the order.

THE CHILDREN'S ADVOCATE

The office of the Children's Advocate was established in 1992. The duties of the Children's Advocate include representing the rights, interests and views of children receiving or entitled to receive services under *The Child and Family Services Act* or *The Adoption Act*. The Children's Advocate does not represent individual children in court proceedings.

The Children's Advocate reviews and investigates complaints about services provided or available to children under these Acts. A child or any interested person on behalf of a child, including family, foster parents or agency staff, can ask the Children's Advocate for assistance.

The Children's Advocate can be contacted at:

102-500 Portage Avenue
Winnipeg MB R3C 3X1
945-1364
Fax: 948-2278
Toll-free: 1-800-263-7146

THE CHILD ABUSE REGISTRY

The province's Director of Child and Family Services maintains a Child Abuse Registry to provide information on child abusers to people such as employers in the child care area and child and family services agencies. The registry contains the names of:

- persons who have been found guilty of an offence involving child abuse or who pleaded guilty to such an offence;
- persons found, in a child protection hearing, to have abused a child; and
- persons found, by an agency's child abuse committee to have abused a child.

There is a process of notifying alleged abusers in certain cases and for objections to the entry of a person's name to be heard.

All names and information on the Child Abuse Registry are confidential. Access to the registry is allowed only to certain people, in specific circumstances. The general public does not have access to this registry.

A person applying for a job that involves contact with children or someone who wishes to volunteer at a school, for example, may be asked to sign a consent so that the Child Abuse Registry can be checked for their name. The fact that a person's name is not on the Child Abuse Registry is no guarantee that the person does not pose a risk to children.

More information about the Child Abuse Registry and about child protection services in Manitoba may be obtained from the Director of Child and Family Services at:

Child and Family Support
210 - 114 Garry Street
Winnipeg MB R3C 4V5
945-6964
Fax: 945-6717
Toll-free: 1-800-282-8069 (Ext. 6964)

CHAPTER 13

ADOPTION

An order of adoption made by a Manitoba court ends the legal relationship between a child and his or her natural parents and begins a new relationship with the adoptive parents. All rights and responsibilities existing between the child and the natural parents end when the child is adopted. The adoptive parents take on all those rights and responsibilities as if the child had been born to them. Adopting parents may keep the child's last name or change it as outlined in *The Change of Name Act* and *The Vital Statistics Act* (see Chapter 14, Change of Name).

On March 15, 1999, a new law *(statute* or *legislation)* governing adoptions came into effect in Manitoba. *The Adoption Act* replaces parts of *The Child and Family Services Act* and makes some changes in the way adoptions are conducted in Manitoba.

The new Act allows for private, non-profit adoption agencies to be licensed to provide virtually the same adoption services as child and family services agencies. Social workers in private practice can also contract with agencies to conduct adoption assessments *(homestudies)*. Agencies can charge people applying to adopt a child set fees for certain adoption services. The fees will depend on the applicants' income.

The Adoption Act also changes some of the restrictions and time periods involved in completing an adoption. For example, birth parents who are minors can place their children for private adoption and have it completed without waiting until they become adults.

The waiting period for obtaining consents for adoption is reduced from 10 days after the birth of a child to 48 hours. There are strict guidelines for ensuring that those involved in an adoption are given clear information about their rights and their options. The Act also says birth fathers will usually be notified about a proposed adoption.

Children to be adopted who are 12 years of age or older are entitled to information and counselling about the proposed adoption. Children 12 and over must also give their consent.

TYPES OF ADOPTION

There are seven types of adoption in Manitoba:

⚖ Adoption of a Permanent Ward

A husband and wife, a man and woman who are living together or a single adult may apply to a child and family services agency to adopt a child who is a permanent ward. A child may become a permanent ward of an agency through a *voluntary surrender of guardianship* or a *permanent order of guardianship* (see Chapter 12, Protection of Children).

A qualified social worker investigates (by conducting a *homestudy*) whether applicants are suitable and capable of being adoptive parents. The names of approved applicants and children available for adoption are entered on a central adoption registry. Once a child has been placed in the home, the adopting parent(s) must apply

to court for an *order of adoption*. The application cannot be made until the child has lived in the home for six months, unless the guardian agency authorizes a longer or shorter time.

Only child and family service agencies, not private adoption agencies, can handle the adoption of children who are permanent wards.

⚖ Private Adoption

A child may be privately placed for adoption by the birth parent or, if the parents are deceased, by a court-appointed guardian. A child and family services agency or a licensed adoption agency must be notified in writing before the placement. The agency must investigate and approve the placement through a homestudy. The agency must give information about rights and options to the person placing the child for adoption. The agency must also gather information about the child and the birth family. The adopting parent(s) can apply to court for an order of adoption no earlier than 30 days and no later than 6 months after all consents to the adoption have been given.

⚖ International Adoption

Manitoba is part of an international treaty that outlines the process for adoptions involving some countries. The treaty is called the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. The *Convention* outlines what procedures must be followed for such things as obtaining consents and preparing the homestudy.

International adoptions handled in Manitoba that are not covered by the *Convention* will follow essentially the same process as adoptions of children who are permanent wards.

Manitobans who are applying to adopt in another country must notify the province's Director of Child and Family Services, who must then verify that the application has been completed and accepted in the other country, and that country supports the adoption.

⚖ De Facto Adoption

Anyone can apply to court to adopt a child whom he or she has cared for and maintained for at least two consecutive years. A husband and wife or a man and woman who are living together may apply together to adopt a child where one of them has cared for and maintained the child for at least two consecutive years. Notice of the application must be given to the child's parents and the agency in the area where the applicant(s) live. That agency must conduct an investigation and report to the court about the adopting parent(s).

⚖ Extended Family Adoption

A parent may place a child with a member of the child's extended family for adoption. The approval of the province's Director of Child and Family Services is not required for such an adoption unless the child is to be placed outside Manitoba. An application for this type of adoption may be made no earlier than six months and no later than 12 months after the date of placement. The judge may ask an agency to conduct an investigation and report to the court.

⚖ Step-parent Adoption

A person married to the parent of a child or an opposite-sex common-law partner of that parent may apply to court to adopt the child if the child is living with and being cared for by them. This can be done jointly with the parent

or alone but with the parent's consent. When a step-parent applies on their own to adopt the child of their spouse, the spouse's rights as a parent do not end with the order of adoption. The approval of the province's Director of Child and Family Services is not required for this type of adoption.

Notice of an application for a step-parent adoption must be given to the child's other parent, who may oppose the application in court. If an order of adoption is granted, the other parent may apply to the court, either as part of the adoption application or separately, for an order allowing visits with the child *(access)*. The judge may ask an agency to conduct an investigation and report to the court.

⚖ Adoption of an Adult

An adult can be adopted where the adopting person is older by a reasonable number of years and the reason for the adoption is acceptable to the court. The only consent required is that of the person to be adopted. An order of adoption of an adult may be made without notifying the Director of Child and Family Services and without a report from an agency.

POST-ADOPTION REGISTRY

The province's Director of Child and Family Services maintains the Post-Adoption Registry, which:

- facilitates the release of information to adoptees, birth parents, adoptive parents, birth siblings and adoptive siblings who are eligible to register;
- searches for and facilitates contact between parties to an adoption; and
- keeps records about parties' wishes to have identifying information disclosed about them or to have personal contact with one another.

The Post-Adoption Registry charges fees for registering and for searches for any party.

For adoptions granted under previous legislation (*The Child and Family Services Act* or its predecessors) birth parents, adoptive parents, adult adoptees and adult birth siblings may register their wish to obtain information about the other parties to the adoption. Information will only be shared when two or more parties to an adoption have registered similar wishes. Registration is entirely voluntary and may be withdrawn at any time.

For adoptions granted under *The Adoption Act*, anyone who is entitled to register on the Post-Adoption Registry can request and obtain information about anyone else who is entitled to register in respect of the same adoption, unless that party has filed a written objection *(disclosure veto* or *contact veto)*.

For more information about the Post-Adoption Registry, contact

Post-Adoption Registry Coordinator
Child and Family Support
201 - 114 Garry Street
Winnipeg MB R3C 4V5
945-6964
Fax: 948-2949
Toll-free: 1-800-282-8069 (Ext. 6964)

For more information about adoptions generally, contact any child and family services agency (see Chapter 17) any licensed adoption agency or the Director of Child and Family Services (see Chapter 12, Protection of Children).

CHAPTER 14

CHANGE OF NAME

The Change of Name Act outlines how to change an existing name and how marriage, divorce or separation affects an existing name. *The Vital Statistics Act* sets out how names must be shown on birth registrations.

In general, anyone 18 years of age or over who has lived in Manitoba for at least three months may apply to the Director of Vital Statistics to change his or her name.

Once the prescribed fee has been paid and an application accepted, Vital Statistics will issue a change of name certificate, amend birth and marriage records to reflect the new name and publish notice of the change in the *Manitoba Gazette*. Vital Statistics will forward this information to another province if the person was born or married there, but the person will be responsible for any costs to change birth or marriage records in that province. The person changing their name must make arrangements to change their name on other documents and records—such as a driver's licence and credit cards.

CHANGE OF NAME AT TIME OF MARRIAGE

The law in Manitoba does not require a person to change their last name when they get married. Both spouses have the right to use:

- their own last name,
- their spouse's last name,
- a combination of both last names, hyphenated or not, in any order they choose, or
- their spouse's last name, with their own last name as a given or middle name.

For example, when Nancy Smith and Brian Jones marry, one or both of them can continue to be known by their surnames before marriage or choose to be known by:

- Smith Jones or Jones Smith,
- Smith-Jones or Jones-Smith, or
- Jones or Smith.

A married person does not have to apply to Vital Statistics for a change of name in any of the above circumstances. The person simply has to use the chosen last name (e.g. Nancy Smith Jones or Brian Jones-Smith). If a new name is used, a letter with a copy of the marriage certificate should be sent to record holders (such as Motor Vehicles and credit card companies) so documents and records (such as a driver's licence, credit cards) can be changed to the new name.

CHANGE OF NAME DURING MARRIAGE OR SEPARATION

A person who changed their last name at the time they married must file a change of name application and obtain a legal change of name if they want to change their name during the marriage. This is so even if the person wants to resume the use of their last name before marriage or birth surname.

CHANGE OF NAME AFTER DIVORCE OR DEATH OF A SPOUSE

A divorced or widowed person may resume using the surname they used before marriage, or at birth, without a formal name change through Vital Statistics.

A CHILD'S LAST NAME

Married parents can choose whether their child's birth will be registered showing the last name of the father, the last name of the mother (current or birth surname) or a combination of both names, hyphenated or not, as the child's last name. (For example, Lisa Smith, Lisa Jones-Smith or Lisa Smith Jones would be some of the possible names for Brian Jones and Nancy Smith's daughter Lisa.)

Where a child's parents are not married, the birth is registered showing the last name of the mother as the child's last name, unless the mother and the person acknowledging he is the father of the child make a written request for one of the options described above.

⚖ Changing the Name of a Child

Under *The Change of Name Act*, the written consent of a child over 12 years of age is required before his or her name can be changed.

When parents have joint custody of their children either parent may apply to change the given names or last name of the children. The other parent must consent in writing to the name change. Under *The Family Maintenance Act*, parents who have lived together after the birth of their child, regardless of whether they are married, have joint custody of the child unless the court orders one parent have sole custody. If the parents of a child have never lived together, then the parent the child lives with has sole custody. (See the introduction to Chapter 5, Custody.)

A parent with sole custody can apply to change a child's name but must give the other parent notice of the change of name application by registered or certified mail. The other parent can object (oppose the change) and apply to court for an order that the change of name not be granted. The parent will have to prove that the requested change of name would not be in the child's best interests. In extraordinary circumstances, the Director of Vital Statistics can process an application to change the name of a child without requiring the consent of a parent or notice to a parent.

Widowed parents may apply to Vital Statistics to change the name of any of their children under age of 18. Children over 12 would have to consent in writing to the proposed change.

When a child is adopted, the adoptive parents may choose to have the child keep the name he or she was given at birth, or change the first, middle and/or last name of the child, as long as they comply with the requirements in *The Vital Statistics Act*.

For more information contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
945-4333
Fax: 948-3128
Toll-free: 1-800-282-8069 (Ext. 4333)

CHAPTER 15

DEATH IN THE FAMILY

WILLS

A will is an important legal document which sets out who will receive *(inherit)* a person's property upon their death.

Naming an Executor

A will should appoint an *executor* to deal with the property (the *estate*). The executor must look after paying the person's debts and other expenses of the estate, out of the estate. The executor is responsible for distributing the estate as set out in the will. There are laws, however, that can affect whether a person's property is inherited as directed in a will. These are discussed below. There are also laws that set out what an executor can and cannot do with the deceased person's estate.

When naming an executor, it is important to check and confirm the person is willing and able to assume the responsibilities involved.

Naming a Guardian

If a person has children under 18, their will should appoint a *guardian* to be responsible for the children's care in the event both parents die. The guardian may also be appointed to look after the children's financial affairs.

Naming a guardian in a will does not guarantee that person will be chosen if there is a dispute among friends and/or relatives who want to care for the children. Naming a guardian in a will does, however, give the court a clear indication of the parent's wishes and can carry substantial weight as the court decides who should be the children's guardian.

When naming someone as a guardian of children in a will, it is important to check and confirm the person is willing and able to assume the responsibilities involved.

Requirements for a Valid Will

Three requirements must be met before a will is valid in Manitoba:

1. The maker of the will be at least 18 years old. (In a very few cases, the person may be younger.)
2. The will must be in writing.
3. The signature of the maker of the will must be witnessed by at least two people unless
   - the will is made by a member of the armed forces on active service or a sailor at sea; or
   - the will is written entirely in the handwriting of the person making it, and is signed and dated by that person. Such a will is called a *holograph will*.

The Wills Act of Manitoba permits a person to ask a court for an order declaring that a particular document is a valid will even though it does not meet these legal requirements. Before making such an order, a judge must be satisfied by the evidence that the document

contains the true wishes of its maker. To avoid the expense and difficulties involved in this type of court hearing, it is best to meet all the legal requirements when drawing up a will.

Usually, a person who witnesses the signing of a will (the *witness*) cannot receive any benefits under the will. The witness's spouse cannot benefit from the will either. A person who is left a gift *(bequest)* in a will is known as a *beneficiary*.

A witness to a will can ask a court for an order that a gift to that witness or their spouse under the will is a valid gift. Before such an order is made, a judge must be satisfied that neither the witness nor their spouse improperly influenced or pressured the person making the will to make this gift. To avoid unnecessary problems, it is a good idea if the witnesses to the will are people who do not benefit from the will in any way.

If a person cannot read or sign their will, it can be read aloud to them, or signed on their behalf by another person or signed with a mark. At least two other people must witness the signature or mark on the will.

⚖ Changing or Revoking a Will

After a will is made, it can be changed or invalidated in a number of ways.

If a person wants to make many changes to their will, it could be easiest to simply prepare a new will. If only a minor change is involved, such as naming a new person to act as executor, a simple document (known as a *codicil*) can be prepared. Like a will, a codicil must be witnessed by two or more people, unless it is entirely in the person's own handwriting and is signed and dated by that person (a *holograph codicil*).

When a will is invalidated or no longer of any effect, it is *revoked*. A will is revoked if the maker

- prepares a new will;
- destroys the original copy;
- in writing, indicates an intention to revoke the will, with witnesses; or
- (in all but a few cases) marries after preparing it.

A will is almost always invalid if the maker marries after it is signed. It is essential to have a new will prepared after marriage.

If the maker of a will divorces after it is prepared, the document will be interpreted as if their former spouse died before them. This means that even if the person left property to their now former spouse in the will, the former spouse will not receive it. If a divorcing person wishes to leave property to a spouse despite any future divorce, their will must clearly say so.

It is important to know wills are not interpreted in this way when spouses separate, even if they have been separated for many years or involved in divorce proceedings when one spouse dies. The separated spouse can still receive any bequests left to him or her in the other spouse's will. Separated spouses must take steps to revise or revoke their will if they want to limit the extent to which their spouse can inherit from their estate.

ASSETS OUTSIDE AN ESTATE

Jointly Owned Property

People can jointly own real estate *(real property)*, such as their marital home, in two different ways: as *tenants-in-common* or as *joint tenants*. The way property is owned affects what happens to it when one of the owners dies.

Most spouses own their marital home as joint tenants. If one owner (joint tenant) dies, the survivor automatically becomes the sole owner of the property. This occurs regardless of any provisions in a will. Certain documents must be filed with the local Land Titles Office to change the certificate of title for jointly owned property from the names of both joint tenants to the name of the survivor.

Property can also be jointly owned as tenants-in-common. When property is owned this way, each owner (tenant-in-common) can decide what to do with their share in their will. If an owner dies with no will, on death their share of the property becomes part of their estate and will be distributed according to law. Their share of the property does not automatically go to the other joint owner. A surviving spouse may still, however, have the right under *The Homesteads Act* to live in the marital home for life (discussed in a following section).

Spouses may jointly own other assets, such as bank accounts or term deposits. As with a home owned as joint tenants, when one spouse dies, the surviving spouse becomes the owner of the entire asset.

Most assets jointly owned by spouses automatically become the property of the surviving spouse when one of them dies. As a result, the assets never form part of the deceased spouse's estate and so cannot be left to someone else through a will. Any provision in a will doing so is of no effect. A will can only direct who receives assets that form part of a deceased person's estate.

Common-law partners may also choose to jointly own the home in which they live, or other assets. The rules described above also apply when one of the partners dies, except that common-law partners have no rights under *The Homesteads Act*.

Other Assets Outside an Estate

Another type of asset that often does not fall into an estate is death benefits under a life insurance policy. When benefits are payable to a named person (the beneficiary), the benefits do not form part of the estate. Only if the beneficiary of the policy is the deceased person's estate do the death benefits go to the estate and form part of the assets dealt with in the will.

Many people also sign forms naming beneficiaries for registered retirement savings plans *(designation of beneficiary forms)*. Unlike wills, these designation of beneficiary forms are not automatically revoked or cancelled by a future marriage or divorce. A lawyer should be consulted to determine if the will should provide how RRSPs are to be distributed.

PROPERTY RIGHTS ON DEATH

A number of pieces of legislation become important to a family once a spouse has died, even if there is a will. This section outlines the legislation that will affect property rights when a death occurs.

The Homesteads Act

The Homesteads Act gives the surviving spouse the right to live in the marital home *(homestead)* for the rest of his or her life, even if the

property was owned only by the deceased spouse. In the case of a family farm, the homestead includes not only the farm dwelling, but also up to 320 acres of land. This is known as a *life estate* in the home, and exists no matter what the will of the deceased spouse provides. This protection remains in place even if the deceased spouse's will leaves little or nothing to the surviving spouse. The claims of creditors, however, can affect this right. Only married spouses, not common-law partners have rights under *The Homesteads Act*.

The Marital Property Act

The Marital Property Act sets out the rules for dividing the value of marital property between spouses when they separate, as well as when one spouse dies. Generally speaking, marital property is any property that the spouses acquired while they were married and living together, regardless of which spouse owns the property.

Both spouses have the right to an equal share of the value of their marital property. If a spouse is unhappy with the assets left to them in their spouse's will, they may wish to consider asking the court for an *accounting* and *equalization* of marital property. An accounting involves preparing a complete list of each spouse's assets (including their value) and debts. The court will determine the total value of the assets each spouse must account for, and how much the spouse with more assets will have to pay the other so each will have an equal share of marital property. This is called an *equalization payment*.

The surviving spouse's share and any equalization payment owing will be calculated in much the same way as when spouses separate (see Chapter 9, Property). If the spouses were separated when one died, the marital property calculations will be as of the date of separation. If the spouses were not separated, then the date of death of the deceased spouse will be used.

Unlike an accounting and equalization on marriage breakdown, a court has no discretion to order that the value of assets be shared unequally on death. As well, a surviving spouse does not have to account for or share certain assets with the estate of the deceased spouse, even if these assets would have been divided had the spouses been separating. For example, if spouses owned their home in joint tenancy, the surviving spouse will become the sole owner of the home on the death of the other spouse. They will not have to account for the value of the home, and will be entitled to own the home over and above their entitlement to half of the value of their marital property. Similarly, a surviving spouse will receive any pension survivor's benefits or, if the beneficiary, life insurance proceeds payable on the death of the other spouse, without having the funds taken into account in the marital property calculation.

If there are insufficient assets in an estate to meet an equalization payment owed to the surviving spouse, other beneficiaries of the estate may have to contribute to make up the shortfall. This may also apply to persons who received certain benefits from the deceased spouse outside their will (such as a named beneficiary under a life insurance policy).

An application for an accounting and equalization of marital property after the death of one spouse must be made (with limited exceptions) within 6 months of the granting of *letters probate* of the deceased's will, or if the deceased spouse left no will, the granting of *letters of administration*. If the surviving spouse had already applied to court for an accounting and equalization of marital property when the other spouse died, they need not re-apply. Only married spouses, not common-law partners, have rights under *The Marital Property Act*.

INHERITANCE WHERE THERE IS NO WILL

The Intestate Succession Act sets out how the property (or estate) of a person who dies without a will *(intestate)* must be distributed.

If there is no will, the surviving spouse (widow or widower) will usually receive the entire estate. This occurs if:

- the deceased left no descendants (such as children or grandchildren); or
- all the deceased's descendants are also descendants of the surviving spouse; or
- the estate is worth $50,000 or less.

If there are descendants who are not also descendants of the surviving spouse, (such as children from another marriage), the whole estate does not automatically go to the surviving spouse. In those cases, the surviving spouse will receive the first $50,000 or half of the estate, whichever is worth more, and half of the remainder. This means a surviving spouse will always receive at least 75% of the estate.

If the entire estate is not going to the surviving spouse because the deceased left children from another relationship, all of the deceased's children will share the rest of the estate equally. At most, the deceased's children will share 25% of the estate.

If the deceased left no spouse, his or her children will share the estate equally. If a person dies without a spouse or descendants, their estate will be distributed to their closest relatives. For someone to receive part of an estate where there is no will, he or she must live 15 days longer than the person who died.

The Intestate Succession Act also provides that if spouses are separated and

(a) either has applied to court for division of property or for a divorce; or

(b) they have already made a final division of their property,

the surviving spouse will not receive a share under the Act. In these circumstances, the surviving spouse may still be entitled to apply for an accounting and equalization of assets under *The Marital Property Act* (if property matters have not already been dealt with) and may also have rights under *The Homesteads Act*. Only married spouses, not common-law partners have rights under *The Intestate Succession Act*.

Unless a person leaves a valid will, their estate will be dealt with under *The Intestate Succession Act*. It is important to remember that through a will a person can leave parts of an estate to a common-law partner or to more distant relatives who would not inherit under that Act, or to charities, churches, friends and so on.

FINANCIAL SUPPORT FROM THE ESTATE FOR DEPENDANTS

The Dependants Relief Act protects family members of a deceased person who were dependent upon him or her for support.

The court can be asked to make a maintenance order if the will does not provide enough support for dependent family members or in cases where there is no will.

The deceased's spouse, common-law partner (in some cases), children, parents, grandparents, brothers, sisters, or children to whom the deceased acted as a parent, and former spouses or common-law partners with maintenance orders or agreements can claim support from the estate under the Act. The court has the power to change the terms of a will to allow for support of the family members who were financially dependent on the deceased.

Adult children, parents, brothers, sisters, grandparents and grandchildren of a deceased person must be able to show that they were substantially dependent on that person for financial support. The Act allows people in financial need to apply for maintenance. The Act does not provide a way for financially independent family members who think they should have been left money or property by a deceased relative to ask the court for part of the estate.

The maintenance for dependent family members that a judge orders be paid from an estate may be in the form of regular *(periodic)* payments (such as monthly), a lump sum payment or a transfer of property.

RIGHTS OF SURVIVING FAMILY MEMBERS UNDER *THE FATAL ACCIDENTS ACT*

If someone has been killed in an accident because of the wrongful or negligent act of a third party, that third party can be sued in court. The party may be ordered to pay compensation to the person's surviving spouse or common-law partner (in some cases), children, grandchildren, parents, sister or brother.

The Fatal Accidents Act makes it clear that the term "parents" includes grandparents, step-parents and people who stood in place of a parent *(in loco parentis)* to the deceased person. The term "child" includes a step-child and one to whom the deceased person stood in place of a parent.

The Workers Compensation Act and *The Manitoba Public Insurance Corporation Act* each provide for compensation payments to dependant family members of a person who has died under circumstances covered by that Act.

PENSION BENEFITS ON DEATH

⚖ Canada Pension Plan

Spouses, common-law partners and dependent children may be eligible for survivor's pension benefits under the Canada Pension Plan on the death of a spouse or parent where the deceased contributed to the plan for at least three years after turning 18. A single lump sum death benefit payment may also be made to the estate of the deceased.

The method of determining eligibility for benefits is complicated. For more information about benefits and what is needed to qualify for Canada Pension Plan death benefits, contact Human Resources Development Canada in one of the following ways:

- In person
  Winnipeg: 391 York Avenue
  1122 Henderson Highway
  1031 Autumnwood Drive
  2527 Portage Avenue
  Brandon: 1039 Princess Avenue
- By telephone
  1-800-277-9914 toll-free (English)
  1-800-277-9915 toll-free (French)
  1-800-255-4786 toll-free (TTY)
- By mail
  Human Resources Development Canada
  Income Security Programs
  P.O. Box 818 Stn. Main
  Winnipeg, MB R3C 2N4
- Through the Internet
  www.hrdc-drhc.gc.ca/isp

Canada Pension Plan death benefits should be applied for as soon as possible. Waiting may result in a loss of benefits.

⚖ Pension Benefits Legislation

■ *The Pension Benefits Act*

The Pension Benefits Act of Manitoba applies to pension plans sponsored by an employer for employees in Manitoba. It does not apply to the Canada Pension Plan, to federal government employees, to federally regulated pension plans or to personal retirement savings (such as an RRSP).

If a member of a pension plan to which the Act applies dies while still employed, the member's spouse or common-law partner is entitled to pension benefits based on the total amount accumulated in a plan. The spouse or partner will not receive a cash payment, but will receive benefits in the form of payments from a life annuity. Payments from this annuity may begin immediately or when the surviving spouse or partner retires.

When a member of a pension plan to which the Act applies retires, his or her pension benefits are payable in the form of a *joint pension* if the member is married or living with a common-law partner when the payments begin. If a plan member or his or her spouse or common-law partner dies after the member retires, the survivor is entitled to pension benefits at a level of at least two-thirds of the original pension amount. This provides spouses and common-law partners with a monthly pension guaranteed for the lives of both of them. It also provides protection for survivors by guaranteeing they receive a set pension income after the death of the other spouse or partner. This protection may be given up by completing a *waiver form*.

If the plan member dies before retirement, death benefits will be payable to the member's spouse or common-law partner, either as an immediate or deferred annuity plan or by transfer to certain types of locked-in investments allowed under *The Pension Benefits Act*. If the plan member did not have a legal spouse or common-law partner, a lump sum payment may be made to a named beneficiary or to the member's estate.

For more information about benefits and to see if a pension plan falls under this Act, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
945-2740
Fax: 948-2375
Toll-free: 1-800-282-8069 (Ext. 2740)

■ The Federal *Pension Benefits Standards Act, 1985*

The *Pension Benefits Standards Act, 1985* applies to most federally regulated pension plans (e.g. the airlines and railways) and provides protection to spouses and common-law partners similar to that in Manitoba's *Pension Benefits Act*.

For more information about benefits under this federal Act and to see if it applies to a pension plan, contact:

Office of the Superintendent of
Financial Institutions of Canada
255 Albert Street
Ottawa ON K1A 0H2
Toll-free: 1-800-385-8647
Internet: www.osfi-bsif.gc.ca

DEATH OF A COMMON-LAW PARTNER

A common-law partner is not entitled to receive the same property from the estate of their deceased partner as a legally married spouse would under *The Marital Property Act* or *The Intestate Succession Act*, regardless of how long the relationship lasted.

A common-law partner can, however, ask a judge to order support from the deceased's estate under *The Dependants Relief Act* if:

- the parties lived together for at least one year and had a child together, or
- they lived together for at least three years;

and

- they were either living together when the death took place, or
- they had lived together within three years of the death.

A claim for support from the estate can also be made by a common-law partner who was entitled to support from the deceased under an agreement or court order in place at the time of the death.

A common-law partner is entitled to receive any property left to them in their partner's will or otherwise (e.g. life insurance benefits, funds in an RRSP). If they jointly owned property, the surviving common-law partner may become the sole owner on their partner's death.

Common-law partners may also be entitled to survivor's benefits under the Canada Pension Plan, *The Pension Benefits Act* of Manitoba and/or the federal *Pension Benefits Standards Act, 1985.*

A common-law partner may also be able to claim rights to specific property of their deceased partner. It must be proved that they contributed to acquiring, improving or maintaining the property in question, and should therefore be compensated for their contribution. To claim a right to property in these circumstances, an application to court is necessary.

CHILDREN OF UNMARRIED PARENTS

Children of unmarried parents have the same rights as those of married parents to inherit from both their mother and their father, and from other relatives.

The Intestate Succession Act, *The Dependants Relief Act* and *The Fatal Accidents Act* all apply to the children of unmarried parents.

TAXES ON INHERITANCE

There are currently no provincial taxes on inheritances. Income tax may be payable by the person's estate.

CHAPTER 16

UNMARRIED RELATIONSHIPS

Some areas of family law treat people who have lived together in a conjugal relationship but never married (common-law partners) much like legally married spouses, while other areas treat them very differently. There is no single definition of a "common-law relationship" in Manitoba law. Some Manitoba laws say that common-law partners must live together for a specified period of time before each partner acquires certain rights. Other laws require that the two individuals intended to live together in a conjugal relationship on a permanent basis, but do not set out a specific length of time. Sometimes a person must make a statement in writing *(declaration)* that another person is their common-law partner before benefits will accrue.

Some Manitoba laws have only recognized common-law relationships between opposite-sex partners and have excluded gay and lesbian relationships. In 2001, Manitoba passed a law that changed ten provincial acts to ensure that both opposite-sex and same-sex common-law partners were treated equally under those acts. This was in response to a court case that was decided by the Supreme Court of Canada. The ten Manitoba Acts that were changed are:

The Family Maintenance Act (non-divorce support)
The Dependants Relief Act (support from estates)
*The Civil Service Superannuation Act** (civil servant pensions)
*The Legislative Assembly Act** (pensions for MLA's)
*The Pension Benefits Act** (provincially regulated pensions)
*The Teachers' Pension Act** (teachers' pensions)
The Fatal Accidents Act (death benefits)
The Manitoba Public Insurance Corporation Act (death benefits)
The Workers Compensation Act (death benefits)
The Queen's Bench Act (which part of the court will hear support applications)

Changes to most of these laws came into effect on July 6, 2001. The changes to the four acts dealing with pensions (marked * in the above list) are in effect as of January 1, 2002.

Here is one example of how common-law partners can be treated similarly to married spouses. Common-law partners who have lived together for at least one year and have a child together, have all the same rights under *The Family Maintenance Act* as legally married spouses, including the right to seek spousal support. If there are no children of the relationship, a common-law partner can apply to the court for support for him or herself if the partners have lived together for at least three years.

A common-law partner who is seeking protective relief under *The Family Maintenance Act* does not need to show the relationship has lasted any particular time. Under *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* (discussed more fully in Chapter 10, Family Violence), people who have lived together in a family, spousal or intimate relationship are able to seek relief from domestic violence. Anyone who is being stalked and who fears for his or her safety will be able to seek relief under this *Act*, and it will not be necessary to show that there has been a relationship between the parties.

An example of how the law treats common-law partners differently from married spouses is in rights to property owned by one of the parties. Neither *The Marital Property Act* nor *The*

Homesteads Act applies to common-law partners. See Chapter 9, Property, for more information.

A person may be entitled to a share of his or her partner's pension credits under the *Canada Pension Plan* or under *The Pension Benefits Act* of Manitoba, in some circumstances. In the case of a pension governed by *The Pension Benefits Act*, the pension-owning partner must have filed a *declaration* with the pension plan administrator, opting in to the sharing provision.

Unmarried partners may have rights to information about partners' pension plans under both the federal *Pension Benefits Standards Act, 1985* and *The Pension Benefits Act* of Manitoba. Both Acts also may give a common-law partner rights to survivor's benefits on a partner's death.

Children born within marriage and those born to common-law partners have equal legal status and rights. *The Family Maintenance Act* gives unmarried parents certain rights respecting custody of their children. If the parents have lived together after the birth of their child, they have joint custody of the child unless a court orders otherwise. If the parents have never lived together after the child's birth, the parent with whom the child lives has sole custody, unless a court orders otherwise. *The Family Maintenance Act* also has provisions for determining the parentage of a child when this is in dispute. These provisions are discussed in Chapter 6, Parentage.

Court applications for custody of or access to children of common-law relationships are no different from applications involving children of married parents. The court's decisions are based on the best interests of the children involved.

Similarly, parents have equal responsibilities to support their children whether married to the child's other parent or not. Manitoba's *Child Support Guidelines* are equally applicable to unmarried parents and to those who are married.

Each of the preceding chapters of this booklet discusses a different area of family law and should be reviewed for more information on the legal remedies available to common-law partners and married spouses. Please remember this booklet provides general information only. How the law affects any person will depend on the facts of their particular case. If you have a legal problem or need specific advice, it is best to consult a lawyer who practices family law.

CHAPTER 17

IMPORTANT ADDRESSES AND PHONE NUMBERS

This chapter includes all the numbers referred to throughout the book. At the time of publishing in February 2002, all the numbers were accurate and current.

If you are having trouble finding provincial or federal government phone numbers, please contact Citizens Inquiry at 945-3744 or 1-800-282-8060.

SHELTERS AND RESOURCES FOR VICTIMS OF ABUSE

24 Hour Crisis Lines

Winnipeg Crisis Line
942-3052 (TDD-accessible)

Province-Wide Crisis Line
1-877-977-0007

SHELTERS

Winnipeg
Ikwe-Widdjiitiwin
987-2780 (24 hours)
Toll-free: 1-800-362-3344

Osborne House
942-3052 (24 hours)

Brandon
Westman Women's Shelter
727-3644
Toll-free: 1-800-862-2727

Dauphin
Parkland Crisis Shelter
638-9484
Toll-free: 1-800-282-8069

Portage la Prairie
Portage Women's Shelter
239-5233
Toll-free: 1-800-704-4904
Local TTY: 239-0665
Toll-free TTY: 1-800-393-0665

Selkirk
Nova House
482-1200
Toll-free: 1-800-561-6668

Steinbach
Eastman Crisis Centre
346-0028
Toll-free: 1-800-326-3431

The Pas
The Pas Committee for Women in Crisis
623-5497
Toll-free: 1-800-977-0007

Thompson
Thompson Crisis Centre
778-7273
Toll-free: 1-800-442-0613

Winkler
South Central Committee on Family Violence
325-9957
Toll-free: 1-877-977-0007
Local TTY: 325-8722
Toll-free TTY: 1-800-995-0058

OTHER CRISIS SERVICES

Ashern, Eriksdale, Lundar
Lakeshore Women's Resource Centre
768-3016
Toll-free: 1-877-977-0007

Gimli, Riverton
Interlake Women's Resource Centre
642-8264 Fax: 642-8280
Toll-free: 1-877-977-0007
(Nova House-Selkirk)
E-mail: iwrc@mts.net
Web site: www.interlakewomen.ca

Snow Lake
Snow Lake Centre on Family Violence
358-7141 Fax: 358-7141

Swan River
Swan Valley Crisis Centre
734-9368 Fax: 734-5440

NON-CRISIS SERVICES

Winnipeg

Alpha House Project
Office: 982-2011 Fax: 254-2602

Elder Abuse Resource Centre
956-6449

Evolve
784-4070

Fort Garry Women's Resource Centre
477-1123 TTY Line: 477-1123

Immigrant Women's Association of Manitoba
989-5800

The Laurel Centre
Office: 783-5460 Fax: 774-2912

L'Entre-Temps des Franco-Manitobaines
925-2550
Toll-free: 1-800-668-3836

Family Violence Program
Ma Mawi Wi Chi Itata Centre, Inc.
925-0300
Toll-free: 1-888-962-6294

Men's Resource Centre
956-6562
Toll-free: 1-866-672-3422

Native Women's Centre
586-1101

North End Women's Centre
Office: 589-7347 Fax: 586-9476

Nor'West Co-op Community Health Centre
633-5955

Pluri-Elles Centre de Femmes
233-1735
Toll-free: 1-800-207-5874
Fax: 233-0277

WISH (Women in Second-Stage Housing)
275-2600

Women's Advocacy Program
945-6851
Toll-free: 1-800-282-8069

Brandon
Samaritan House Ministries
726-0758

Flin Flon
Women's Safe Haven
681-3105

Norman Region
Women's Advocacy Program
627-8483

Thompson Region
Thompson RCMP
778-7273

Westman Region
Women's Advocacy Program
726-6515

CHILD AND FAMILY SERVICES AGENCIES

Main Offices and Phone numbers are listed under three sections:

Winnipeg
Other regions in Manitoba
First Nations agencies

Many of the agencies listed below have sub-offices serving particular communities. Check with the agency's main office for current listings.

⚖ Winnipeg

Winnipeg Child and Family Services
Executive Office
404 - 1 Wesley Avenue
Winnipeg MB R3C 4C6
944-4438
Fax: 944-4395

Winnipeg Child and Family Services - Central Area
2nd Floor - 835 Portage Avenue
Winnipeg MB R3G 0N6
944-4200
Fax: 944-4250

Winnipeg Child and Family Services - East Area
222 Provencher Boulevard
Winnipeg MB R2H 0G5
944-4288
Fax: 944-4666

This office also provides services in parts of Southeastern Manitoba

Winnipeg Child and Family Services - Northwest Area
1386 Main Street
Winnipeg MB R2W 3V1
944-4031
Fax: 944-4022 or 944-4006

Winnipeg Child and Family Services - Southwest Area
6 - 677 Stafford Street
Winnipeg MB R3M 2X7
944-4360
Fax: 944-4521

Winnipeg Child and Family Services - After Hours
1076A Main Street
Winnipeg MB R2W 5J3
944-4050
Fax: 944-4029

Jewish Child and Family Services
C200 - 123 Doncaster Street
Winnipeg MB R3N 2B2
477-7430
Fax: 477-7450

⚖ Other Manitoba Regions

Child and Family Services of Central Manitoba
Main Office
25 - 3rd Street SE
Portage la Prairie MB R1N 1N1
857-8751
Fax: 239-1413

Manitoba Family Services - Eastman Regional Office
Provincial Building
Box 50 - 20 1st Street South
Beausejour MB R0E 0C0
268-6154
Fax: 268-6222

Manitoba Family Services - Interlake Regional Office
Selkirk Mental Health Centre
3rd Floor,
Administration Building - Box 9600
825 Manitoba Avenue
Selkirk MB R1A 2B5
785-5100
Fax: 785-4882

Manitoba Family Services -
Parkland Regional Office
309, 27 - 2nd Avenue SW
Dauphin MB R7N 3E5
622-2035
Fax: 638-3278

Manitoba Family Services -
Norman Regional Office
50 Church Street
Flin Flon MB R8A 1K5
687-1700
Fax: 687-1708

Manitoba Family Services -
Thompson Regional Office
Box 5 - 59 Elizabeth Drive
Thompson MB R8N 1X4
677-6570
Fax: 677-6517

Churchill Child and Family Services
Churchill Regional Health Authority Inc.
Churchill MB R0B 0E0
675-8334
Fax: 675-2445

Child and Family Services
of Western Manitoba
800 McTavish Avenue
Brandon MB R7A 7L4
726-6030
Fax: 726-6775
Toll-free: 1-800-483-8980

First Nations Agencies

Peguis Child and Family Services
P.O. Box 610
Peguis MB R0C 3J0
645-2101
Fax: 645-2558

Peguis Child and Family Services
Winnipeg Outreach Office
Unit 6-350 Keewatin Street
Winnipeg MB R2X 2R9
632-5404
Fax: 632-7226

Anishinaabe Child and Family Services
Main Office
Fairford First Nation
General Delivery
Fairford MB R0C 0X0
659-4546
Fax: 659-5877

Awasis Agency of Northern Manitoba
100 - 701 Thompson Drive
Thompson MB R8N 2A2
677-1500 After hours: 778-6341
Fax: 778-8428
Toll-free: 1-800-667-4734

Cree Nation Child
and Family Caring Agency
Otineka Mall, P.O. Box 10130
Opaskwayak MB R0B 2J0
623-7456
Fax: 623-3847

Dakota Ojibway Child and Family Services
702 Douglas Street
Brandon MB R7A 7B2
729-3650
Fax: 728-1806
Toll-free (after hours only): 1-800-263-6237

Intertribal Child and Family Services
(Dakota, Fish River and Jackhead areas only)
P. O. Box 610
Peguis MB R0C 3J0
645-2049, 645-2101 After hours: 645-2000
Fax: 645-2558

Island Lake First Nations Family Services
General Delivery
Garden Hill MB R0B 0T0
456-2015
Fax: 456-2641
Toll-free: 1-888-242-0605

Sagkeeng Child and Family Services Inc.
P. O. Box 700
Pine Falls MB R0E 1M0
367-2215
Fax: 367-8510
1-877-367-4020 toll-free

Southeast Child and Family Services
4th Floor, 360 Broadway
Winnipeg MB R3C 0T6
947-0011
Fax: 947-0009

West Region Child and Family Services
Rolling River First Nation
Box 280
Erickson MB R0J 0P0
636-6100
Fax: 636-6158
Toll-free: 1-888-333-5518

COURT OFFICES

Winnipeg Court Offices

Court of Appeal
100E-408 York Avenue
Winnipeg MB R3C 0P9
945-2647
Fax: 948-2072

Court of Queen's Bench
2nd floor, 408 York Avenue
Winnipeg MB R3C 0P9

Criminal Matters
945-5382
Fax: 945-5550

General (includes civil)
945-0344
Fax: 945-5550

Family Matters
945-5383
Fax: 945-5550

Probate (Estate) Matters
945-3184
Fax: 945-5550

227 Provencher Boulevard
St. Boniface MB R2H 0G4
945-8010
Fax: 945-5562

Provincial Court

Criminal Division
1st floor - 408 York Avenue
Winnipeg MB R3C 0P9
945-3454
Fax: 945-7130

Highway Traffic Matters
100-373 Broadway
Winnipeg MB R3C 4S4
945-3156
Fax: 948-2023

All Winnipeg and St. Boniface court offices can be reached toll-free at 1-800-282-8069. (The extension number for a particular office is the last 4 digits of its phone number.)

Regional Court Offices

Brandon

Court of Queen's Bench
1104 Princess Avenue
Brandon MB R7A 0P9
726-6240
Fax: 726-6547

Provincial Court
1104 Princess Avenue
Brandon MB R7A 0P9
726-6598
Fax: 726-6995

Maintenance Enforcement
1104 Princess Avenue
Brandon MB R7A 0P9
726-6237
Fax: 726-6546

Dauphin

Court of Queen's Bench
and Provincial Court
Court Office
114 River Avenue W.
Dauphin MB R7N 0J7
General Info: 622-2086
Fax: 622-2099

Flin Flon

Court of Queen's Bench
and Provincial Court
Court Office
104-143 Main Street
Flin Flon MB R8A 1K2
687-1670
Fax: 687-1673

Minnedosa

Court of Queen's Bench
and Provincial Court
Court Office
70 - 3rd Avenue SW, Box 414
Minnedosa MB R0J 1E0
867-2238
Fax: 867-2440

Morden

Court of Queen's Bench
and Provincial Court
Court Office
301 Wardrop Street
Morden MB R6M 1X6
822-2882
Fax: 822-2883

Portage la Prairie

Court of Queen's Bench
20-3rd Street SE
Portage la Prairie MB R1N 1M9
239-3431
Fax: 239-3410

Provincial Court
25 Tupper Street N.
Portage la Prairie MB R1N 3K1
239-3338
Fax: 239-3402

Selkirk

Court of Queen's Bench
and Provincial Court
Court Office
101 - 235 Eaton Avenue
Selkirk MB R1A 0W7

Court of Queen's Bench
785-5122
Fax: 785-5125

Provincal Court
785-5077
Fax: 785-5125

Steinbach

Provincial Court
Court Office
284 Reimer Avenue, Box 21480
Steinbach MB R0A 2T3
346-6070
Fax: 326-5101

Swan River

Court of Queen's Bench
and Provincial Court
Court Office
201 - 4th Avenue S., Box 206
Swan River MB R0L 1Z0
734-2252
Fax: 734-9544

The Pas

Court of Queen's Bench
and Provincial Court
Court Office
300-3rd Street E., Box 1259
The Pas MB R9A 1L2
627-8420
Fax: 623-6528

⚖ Thompson

Court of Queen's Bench
and Provincial Court
Court Office
59 Elizabeth Drive, Box 34
Thompson MB R8N 1X4

Court of Queen's Bench
677-6757
Fax: 677-6686

Provincial Court
General Info: 677-6761
Fax: 677-6584

⚖ Virden

Court of Queen's Bench
and Provincial Court
Court Office
232 Wellington Street W., Box 1478
Virden MB R0M 2C0
748-4288
Fax: 748-2980

FAMILY SERVICES AND HOUSING

Employment and Income Asistance

1st Floor - 111 Rory Street
Winnipeg MB R3B 1A1
Intake Inquiry Line: 948-4000
Fax: 948-4048
TTY: 948-4532
Toll-free: 1-800-282-8069

LEGAL AID OFFICES

⚖ Winnipeg Legal Aid Offices

Legal Aid Manitoba
Administrative and Winnipeg Area Office
402 - 294 Portage Avenue
Winnipeg MB R3C 0B9
985-8500
Fax: 944-8582
Toll-free: 1-800-261-2960

Aboriginal Centre Law Office
409 - 181 Higgins Avenue
Winnipeg MB R3B 3G1
985-5230
Fax: 985-5237
Toll-free: 1-800-300-2307

Family Law Centre
Room 308-294 Portage Avenue
Winnipeg MB R3C 0B9
985-8550
Fax: 956-4146
Toll-free: 1-800-766-2148

Child Protection Law Office
Room 416-294 Portage Avenue
Winnipeg MB R3C 0B9
985-8566
Fax: 985-5224
Toll-free: 1-800-839-7946

Regional Legal Aid Offices

Westman Community Law Centre
(Brandon Area Office)
1239 Princess Avenue
Brandon MB R7A 0R2
729-3484
Fax: 726-1732
Toll-free: 1-800-876-7326

Parklands Community Law Centre
(Dauphin Area Office)
31 3rd Avenue N.E.
Dauphin MB R7N 0Y5
622-7000
Fax: 622-7029
Toll-free: 1-800-810-6977

Northlands Community Law Centre
(The Pas/Thompson Area Office)
236 Edwards Avenue; Box 2429
The Pas MB R9A 1M2
627-4820
Fax: 627-4838
Toll-free: 1-800-268-9790

Thompson Community Law Centre
3 Station Road
Thompson MB R8N 0N3
677-1211
Fax: 677-1220
Toll-free: 1-800-665-0656

IMPORTANT ADDRESSES AND PHONE NUMBERS FROM EARLIER CHAPTERS

Chapter 1 - Legal Information and Legal Advice

The Law Phone-in and
Lawyer Referral Program
Community Legal Education Association
501-294 Portage Avenue
Winnipeg MB R3C 0B9
943-2305
Toll-free: 1-800-262-8800

To purchase copies of Manitoba government legislation, contact:

Statutory Publications
200 Vaughan Street
Winnipeg, MB R3C 1T5
945-3101
Fax: 945-7172
Toll-free: 1-800-282-8069 (Ext. 3101)

To purchase copies of federal government legislation, contact:

Canada Communications Group
Government Services Canada
Ottawa, ON K1A 0S9
1-819-956-4802

Chapter 2 - The Court System and Procedures and Alternate Dispute Resolution

For information on mediation, contact:

Family Conciliation
1430 - 405 Broadway
Winnipeg MB R3C 3L6
945-7236
Fax: 948-2142
Toll-free: 1-800-282-8069 (Ext. 7236)

Family Mediation Canada
528 Victoria Street North
Kitchener ON N2H 5G1
1-519-585-3118
Fax: 1-519-585-3121
E-mail: fmc@fmc.ca
Web site: www.fmc.ca

Family Mediation Manitoba
P.O. Box 2369
Winnipeg MB R3C 4A6
Web site: www.fmm.winnipeg.mb.ca

⚖ Chapter 3 - Marriage

For information regarding the requirements to get married, contact:

Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
945-3727
Fax: 948-3128
Toll-free: 1-800-282-8069 (Ext. 3727)

For information about pension rights and benefits, contact:

Pension Commission of Manitoba
1004 - 401 York Avenue
Winnipeg MB R3C 0V8
945-2740
Fax: 948-2375
Toll-free: 1-800-282-8069 (Ext. 2740)
(also referred to in Chapter 9, Property, and Chapter 15, Death in the Family)

Office of the Superintendent of
Financial Institutions of Canada
255 Albert Street
Ottawa ON K1A 0H2
Toll-free: 1-800-385-8647
(also referred to in Chapter 9, Property, and Chapter 15, Death in the Family)

⚖ Chapter 5 - Custody

To register for, or learn more about the Government's free parent information program, contact:

For the Sake of the Children
Parent Information Program
945-4257
Toll-free:1-800-282-8069 (Ext. 4257)

⚖ Chapter 7 - Child Support

For information about the Federal *Child Support Guidelines*, contact:

Federal Department of Justice
Toll-free 1-888-373-2222
Internet: http://canada.justice.gc.ca

For information about the tax rules regarding child support, contact:

Rulings Directorate
Canada Customs and Revenue Agency
320 Queen Street
16th Tower A Place de Ville
Ottawa ON K1A 0L5
Fax: 1-613-957-2088

General Inquiries Line
1-613-957-8953

For information about the *Election for Child Support Payments* form (T1157), contact:

Canada Customs and Revenue Agency
983-6350
Toll-free: 1-800-959-8281
Web site: www.ccra-adrc.gc.ca.

⚖ Chapter 9 - Property

For information about sharing and entitlement to Canada Pension Plan benefits, contact Human Resources Development Canada:

In person
Winnipeg: 391 York
1122 Henderson Highway
1031 Autumnwood Drive
2527 Portage Avenue

Brandon: 1039 Princess Avenue

By telephone
Toll-free: 1-800-277-9914 (English)
Toll-free: 1-800-277-9915 (French)
Toll-free: 1-800-255-4786 (TTY)

By mail
Human Resources Development Canada
Income Security Programs
P.O. Box 818 Stn. Main
Winnipeg MB R3C 2N4

On the Internet
www.hrdc-drhc.gc.ca/isp

See the section on Chapter 3 at page 97 for the addresses and phone numbers of the Pension Commission of Manitoba (regarding provincially regulated pensions) and the Office of the Superintendent of Financial Institutions of Canada (regarding most federally regulated pensions).

⚖ Chapter 10 - Family Violence

Family Violence Prevention Program
4126 - 300 Carlton Street
Winnipeg MB R3B 2K6
945-1709
Fax: 948-2286

Victim/Witness Assistance Program:
945-3594
Toll-free: 1-800-282-8069 (ext.3594)

Child Witness Support Program
Winnipeg: 945-0662
Brandon: 726-6515
The Pas: 627-8483
Thompson: 677-6368
Selkirk: 785-5213
Dauphin: 622-2197

⚖ Chapter 11 - Enforcement of Support, Custody and Access

For information about Manitoba's reciprocal maintenance enforcement or child custody enforcement arrangements with other countries, contact:

Family Law Branch
Manitoba Justice
705 - 405 Broadway
Winnipeg MB R3C 3L6
945-0268
Fax: 948-2004
Toll-free: 1-800-282-8069 (Ext. 0268)

For information about enforcement of support payments, contact:

Maintenance Enforcement Program
225 - 405 Broadway
Winnipeg MB R3C 3L6
945-7133
Fax: 945-5449
Toll-free: 1-800-282-8069 (Ext. 7133)

For assistance in international child abduction cases, contact:

Foreign Affairs and
International Trade Canada
1-613-996-8885
Toll-free: 1-800-267-6788

ISS Canada
Suite 714
151 Slater Street
Ottawa ON K1P 5H3
1-613-236-6161
Fax: 1-613-233-7306
E-Mail: issc@magma.ca

Child Find Manitoba, Inc.
343-800 Portage Avenue
Winnipeg MB R3G 0N4
945-5735
Fax: 948-2461
Toll-free: 1-800-532-9135
E-Mail: childmb@AOL.com
(Child Find assists with both domestic and international abduction cases.)

For child access services, contact:
Winnipeg Children's Access Agency Inc.
11 - 222 Osborne Street
Winnipeg MB R3L 1Z3
284-4170
Fax: 284-4162

⚖ Chapter 12 - Protection of Children

The Children's Advocate
102-500 Portage Avenue
Winnipeg MB R3C 3X1
945-1364
Fax: 948-2278
Toll-free: 1-800-263-7146

For information on the Child Abuse Registry, contact:
Child and Family Support
201 - 114 Garry Street
Winnipeg MB R3C 4V5
945-6964
Fax: 948-2042
Toll-free: 1-800-282-8069 (Ext. 6964)

⚖ Chapter 13 - Adoption

For information on the Post-Adoption Registry, contact:
Post-Adoption Registry Coordinator
Child and Family Support
945-6964
Fax: 948-2949
Toll-free: 1-800-282-8069 (Ext. 6964)
(address to the left under Chapter 12 heading)

⚖ Chapter 14 - Change of Name

For information about changes of name and birth registrations contact:
Vital Statistics Agency
254 Portage Avenue
Winnipeg MB R3C 0B6
945-4333
Fax: 948-3128
Toll-free: 1-800-282-8069 (Ext. 4333)